

DIVISION OF REAL ESTATE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill amends provisions related to certain professions regulated by the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the Utah Residential Mortgage Practices and Licensing Act regarding:
 - requirements for licensure;
 - record requirements; and
 - investigations;
- ▶ amends the Appraisal Management Company Registration and Regulation Act regarding:
 - registration requirements and qualifications;
 - fees charged by the Division of Real Estate for registration and services;
 - adherence to professional standards;
 - the Division of Real Estate's authority; and
 - the transmission of reports to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;
- ▶ amends the Real Estate Licensing and Practices Act regarding:
 - exemptions to licensure;



- 28 • investigations; and
- 29 • remedies and penalties;
- 30 ▶ amends the Real Estate Appraiser and Licensing and Certification Act regarding:
- 31 • the duties of the Real Estate Appraiser Licensing and Certification Board;
- 32 • the Division of Real Estate's denial of licensure, certification, or registration;
- 33 and
- 34 • investigations; and
- 35 ▶ makes technical and conforming changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 [61-2-203](#), as last amended by Laws of Utah 2017, Chapter 182
- 43 [61-2c-209](#), as last amended by Laws of Utah 2012, Chapter 166
- 44 [61-2c-302](#), as last amended by Laws of Utah 2017, Chapter 182
- 45 [61-2c-401](#), as last amended by Laws of Utah 2017, Chapter 182
- 46 [61-2e-102](#), as last amended by Laws of Utah 2011, Chapter 289
- 47 [61-2e-104](#), as last amended by Laws of Utah 2012, Chapter 166
- 48 [61-2e-201](#), as last amended by Laws of Utah 2017, Chapter 182
- 49 [61-2e-202](#), as last amended by Laws of Utah 2011, Chapter 289
- 50 [61-2e-203](#), as last amended by Laws of Utah 2011, Chapters 289 and 342
- 51 [61-2e-302](#), as enacted by Laws of Utah 2009, Chapter 269
- 52 [61-2e-401](#), as last amended by Laws of Utah 2017, Chapter 182
- 53 [61-2f-202](#), as last amended by Laws of Utah 2017, Chapter 182
- 54 [61-2f-401](#), as last amended by Laws of Utah 2017, Chapter 182
- 55 [61-2f-407](#), as renumbered and amended by Laws of Utah 2010, Chapter 379
- 56 [61-2g-205](#), as last amended by Laws of Utah 2014, Chapter 350
- 57 [61-2g-309](#), as renumbered and amended by Laws of Utah 2011, Chapter 289
- 58 [61-2g-501](#), as last amended by Laws of Utah 2017, Chapter 182

59 ENACTS:

60 **61-2E-205**, Utah Code Annotated 1953

61

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

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

64 **61-2-203. Adjudicative proceedings -- Citation authority.**

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

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

68 (a) a citation, pursuant to Subsection (3);

69 (b) a notice of agency action; or

70 (c) a notice of formal or informal proceeding.

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

74 (a) Subsection **61-2c-201**(1), which requires licensure;

75 (b) Subsection **61-2c-201**(4), which requires entity licensure;

76 (c) Subsection **61-2c-205**(3), which requires notification of a change in specified
77 information regarding a licensee;

78 (d) Subsection **61-2c-205**(4), which requires notification of specified legal actions;

79 (e) Subsection **61-2c-301**(1)(g), which prohibits failing to respond to the division
80 within the required time period;

81 (f) Subsection **61-2c-301**(1)(h), which prohibits making a false representation to the
82 division;

83 (g) Subsection **61-2c-301**(1)(i), which prohibits taking a dual role in a transaction;

84 (h) Subsection **61-2c-301**(1)(l), which prohibits engaging in false or misleading
85 advertising;

86 (i) Subsection **61-2c-301**(1)(t), which prohibits advertising the ability to do licensed
87 work if unlicensed;

88 (j) Subsection **61-2c-302**(5), which requires a mortgage entity to create and file a
89 quarterly report of condition;

- 90 (k) Subsection 61-2e-201(1), which requires registration;
- 91 (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;
- 92 (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;
- 93 (n) Subsection 61-2e-401(1)[~~(b)~~](c), which prohibits failure to respond to a request by
- 94 the division;
- 95 (o) Subsection 61-2f-201(1), which requires licensure;
- 96 (p) Subsection 61-2f-206(1), which requires entity registration;
- 97 (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;
- 98 (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;
- 99 (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated
- 100 with a principal broker;
- 101 (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records for
- 102 inspection by the division;
- 103 (u) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive
- 104 advertising;
- 105 (v) Subsection 61-2f-401(20), which prohibits failing to respond to a division request;
- 106 (w) Subsection 61-2g-301(1), which requires licensure;
- 107 (x) Subsection 61-2g-405(3), which requires making records required to be maintained
- 108 available to the division;
- 109 (y) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;
- 110 (z) a rule made pursuant to any Subsection listed in this Subsection (3);
- 111 (aa) an order of the division; or
- 112 (bb) an order of the commission or board that oversees the person's profession.
- 113 (4) (a) In accordance with Subsection (9), the division may assess a fine against a
- 114 person for a violation of a provision listed in Subsection (3), as evidenced by:
- 115 (i) an uncontested citation;
- 116 (ii) a stipulated settlement; or
- 117 (iii) a finding of a violation in an adjudicative proceeding.
- 118 (b) The division may, in addition to or in lieu of a fine under Subsection (4)(a), order
- 119 the person to cease and desist from an activity that violates a provision listed in Subsection (3).
- 120 (5) Except as provided in Subsection (7)(d), the division may not use a citation to

121 effect a license:

122 (a) denial;

123 (b) probation;

124 (c) suspension; or

125 (d) revocation.

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

127 (i) be in writing;

128 (ii) describe with particularity the nature of the violation, including a reference to the

129 provision of the statute, rule, or order alleged to have been violated;

130 (iii) clearly state that the recipient must notify the division in writing within 20

131 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing

132 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

133 (iv) clearly explain the consequences of failure to timely contest the citation or to make

134 payment of a fine assessed by the citation within the time period specified in the citation.

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

136 (7) (a) A citation becomes final:

137 (i) if within 20 calendar days from the service of the citation, the person to whom the

138 citation was issued fails to request a hearing to contest the citation; or

139 (ii) if the director or the director's designee conducts a hearing pursuant to a timely

140 request for a hearing and issues an order finding that a violation has occurred.

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

142 (c) A citation that becomes the final order of the division due to a person's failure to

143 timely request a hearing is not subject to further agency review.

144 (d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on

145 probation the license of a licensee who fails to comply with a citation after the citation

146 becomes final.

147 (ii) The failure of a license applicant to comply with a citation after the citation

148 becomes final is a ground for denial of the license application.

149 (8) (a) The division may not issue a citation under this section after the expiration of

150 one year following the occurrence of a violation.

151 (b) The division may issue a notice to address a violation that is outside of the one-year

152 citation period.

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

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

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

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

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

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

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

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

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

169 (A) where the person resides; or

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

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

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

175 Section 2. Section **61-2c-209** is amended to read:

176 **61-2c-209. Sponsorship -- Affiliation.**

177 (1) (a) The division may not license an individual, and an individual licensed under this
178 chapter may not conduct the business of residential mortgage loans unless:

179 (i) if licensed as a mortgage loan originator, the individual:

180 (A) is sponsored by an entity licensed under this chapter; and

181 (B) is affiliated with the sponsoring entity's principal lending manager; or

182 (ii) if licensed as a lending manager, the individual is sponsored by an entity licensed

183 under this chapter.

184 (b) The division may not license [~~any~~] an entity and an entity licensed under this
185 chapter may not conduct the business of residential mortgage loans unless the entity:

186 (i) conducts the entity's business of residential mortgage loans from a location within
187 the United States;

188 [~~(i)~~] (ii) sponsors a principal lending manager;

189 [~~(ii)~~] (iii) identifies at least one control person for the entity; and

190 [~~(iii)~~] (iv) provides a list of the mortgage loan originators sponsored by the entity.

191 (2) (a) A mortgage loan originator's license automatically becomes inactive the day on
192 which:

193 (i) the mortgage loan originator is not sponsored by an entity licensed under this
194 chapter;

195 (ii) the license of the entity with which the mortgage loan originator is sponsored
196 becomes inactive or terminates;

197 (iii) the mortgage loan originator is not affiliated with a principal lending manager; or

198 (iv) the license of the principal lending manager with whom the mortgage loan
199 originator is affiliated becomes inactive or terminates.

200 (b) A lending manager's license automatically becomes inactive the day on which:

201 (i) the lending manager is not sponsored by an entity licensed under this chapter; or

202 (ii) the license of the entity with which the lending manager is sponsored becomes
203 inactive or terminates.

204 (c) [~~A~~] An entity licensed under this chapter automatically becomes inactive the day on
205 which the entity's sponsorship with [~~its~~] the entity's principal lending manager terminates.

206 (3) (a) A person whose license is inactive may not transact the business of residential
207 mortgage loans.

208 (b) To activate an inactive mortgage loan originator license, an individual shall:

209 (i) provide evidence that the individual:

210 (A) is sponsored by an entity that holds an active license under this chapter; and

211 (B) is affiliated with a principal lending manager who holds an active license under this
212 chapter; and

213 (ii) pay a fee to the division set in accordance with Section [63J-1-504](#).

- 214 (c) To activate an inactive lending manager license, an individual shall:
- 215 (i) provide evidence that the individual is sponsored by an entity that holds an active
- 216 license under this chapter; and
- 217 (ii) pay a fee to the division set in accordance with Section 63J-1-504.
- 218 (d) To activate an inactive license held by an entity, an entity shall:
- 219 (i) provide evidence of the entity's sponsorship of a principal lending manager; and
- 220 (ii) pay a fee to the division set in accordance with Section 63J-1-504.
- 221 (4) (a) A mortgage loan originator shall conduct the business of residential mortgage
- 222 loans only:
- 223 (i) through the entity by which the individual is sponsored; and
- 224 (ii) in the business name under which the sponsoring entity's principal lending manager
- 225 is authorized by the division to do business.
- 226 (b) An individual licensed under this chapter may not:
- 227 (i) engage in the business of residential mortgage loans on behalf of more than one
- 228 entity at the same time;
- 229 (ii) be sponsored by more than one entity at the same time;
- 230 (iii) transact the business of residential mortgage loans for the following at the same
- 231 time:
- 232 (A) an entity licensed under this chapter; and
- 233 (B) an entity that is exempt from licensure under Section 61-2c-105; or
- 234 (iv) if the individual is a mortgage loan originator, receive consideration for transacting
- 235 the business of residential mortgage loans from any person except the principal lending
- 236 manager of the mortgage loan originator's sponsoring entity.
- 237 (c) This Subsection (4) does not restrict the number of:
- 238 (i) different lenders a person may use as a funding source for a residential mortgage
- 239 loan; or
- 240 (ii) entities in which an individual may have an ownership interest, regardless of
- 241 whether the entities are:
- 242 (A) licensed under this chapter; or
- 243 (B) exempt under Section 61-2c-105.
- 244 (5) [~~The division by rule made in~~] In accordance with Title 63G, Chapter 3, Utah

245 Administrative Rulemaking Act, the division may make rules that:

246 (a) define what constitutes:

247 (i) affiliation; [~~or~~]

248 (ii) sponsorship; [~~and~~] or

249 (iii) conducting the business of residential mortgage loans from a location within the
250 United States; and

251 (b) provide procedures by which:

252 (i) an individual who is licensed under this chapter may provide evidence of

253 sponsorship by an entity that is licensed under this chapter;

254 (ii) a mortgage loan originator may provide evidence of affiliation with a principal
255 lending manager; and

256 (iii) an entity licensed under this chapter may:

257 (A) provide evidence of its sponsorship of a principal lending manager;

258 (B) identify at least one control person for the entity; and

259 (C) provide a list of the one or more mortgage loan originators that the entity sponsors.

260 Section 3. Section **61-2c-302** is amended to read:

261 **61-2c-302. Record requirements.**

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

264 (2) A licensee, or a person required to be licensed under this chapter, shall maintain
265 and safeguard in [~~its~~] the licensee's or the person's possession a record described in Subsection
266 (1) for four years from the last to occur of the following:

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

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

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

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

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

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

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

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

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

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

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

285 (ii) provide each quarterly report of condition to the nationwide database no later than
286 75 days after the last day of the reporting quarter; and

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

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

292 Section 4. Section **61-2c-401** is amended to read:

293 **61-2c-401. Investigations.**

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

296 (a) (i) a licensee;

297 (ii) a person required to be licensed under this chapter; or

298 (iii) the following with respect to an entity that is a licensee or an entity required to be
299 licensed under this chapter:

300 (A) a manager;

301 (B) a managing partner;

302 (C) a director;

303 (D) an executive officer; or

304 (E) an individual who performs a function similar to an individual listed in this
305 Subsection (1)(a)(iii);

306 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or

307 (ii) the following with respect to an entity that has applied for a license or renewal of
 308 licensure under this chapter:

309 (A) a manager;

310 (B) a managing partner;

311 (C) a director;

312 (D) an executive officer; or

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

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

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

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

318 (a) administer an oath or affirmation;

319 (b) issue a subpoena that requires:

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

321 (ii) the production of evidence;

322 (c) take evidence;

323 (d) require the production of a record or information relevant to an investigation; and

324 (e) serve a subpoena by certified mail.

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

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

329 (4) A failure to respond to a request by the division in an investigation authorized
 330 under this chapter within 10 days after the day on which the ~~H~~→ **[order]** **request** ←~~H~~ is served is
 330a considered as a

331 separate violation of this chapter, including:

332 (a) failing to respond to a subpoena;

333 (b) withholding evidence; or

334 (c) failing to produce a record.

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

- 338 (a) investigations of complaints; or
- 339 (b) inspections of the record required to be maintained under:
 - 340 (i) this chapter; or
 - 341 (ii) rules adopted by the division under this chapter.
- 342 (6) (a) If a licensee maintains a record required by this chapter and the rules adopted by
- 343 the division under this chapter outside Utah, the licensee is responsible for all reasonable costs,
- 344 including reasonable travel costs, incurred by the division in inspecting the record.
- 345 (b) Upon receipt of notification from the division that a record maintained outside Utah
- 346 is to be examined in connection with an investigation or an examination, the licensee shall
- 347 deposit with the division a deposit of \$500 to cover the division's expenses in connection with
- 348 the examination of the record.
- 349 (c) If the deposit described in Subsection (6)(b) is insufficient to meet the estimated
- 350 costs and expenses of examination of the record, the licensee shall make an additional deposit
- 351 to cover the estimated costs and expenses of the division.
- 352 (d) (i) A deposit under this Subsection (6) shall be deposited in the General Fund as a
- 353 dedicated credit to be used by the division under Subsection (6)(a).
- 354 (ii) The division, with the concurrence of the executive director, may use a deposit as a
- 355 dedicated credit for the records inspection costs under Subsection (6)(a).
- 356 (iii) A deposit under this Subsection (6) shall be refunded to the licensee to the extent it
- 357 is not used, together with an itemized statement from the division of all amounts it has used.
- 358 (7) Failure to deposit with the division a deposit required to cover the costs of
- 359 examination of a record that is maintained outside Utah shall result in automatic suspension of
- 360 a license until the deposit is made.
- 361 (8) (a) If a person is found to have violated this chapter or a rule made under this
- 362 chapter, the person shall pay the costs incurred by the division to copy a record required under
- 363 this chapter, including the costs incurred to copy an electronic record in a universally readable
- 364 format.
- 365 (b) If a person fails to pay the costs described in Subsection (8)(a) when due, the
- 366 person's license or certification is automatically suspended:
 - 367 (i) beginning the day on which the payment of costs is due; and
 - 368 (ii) ending the day on which the costs are paid in full.

369 Section 5. Section **61-2e-102** is amended to read:

370 **61-2e-102. Definitions.**

371 As used in this chapter:

372 (1) "Applicable appraisal standards" means:

373 (a) the Uniform Standards for Professional Appraisal Practice:

374 (i) published by the Appraisal Foundation; and

375 (ii) as adopted under Section [61-2g-403](#);

376 (b) Chapter 2g, Real Estate Appraiser Licensing and Certification Act; and

377 (c) rules made by the board under Chapter 2g, Real Estate Appraiser Licensing and
378 Certification Act.

379 (2) "Appraisal" is as defined in Section [61-2g-102](#).

380 (3) "Appraisal foundation" is as defined in Section [61-2g-102](#).

381 (4) "Appraisal management company" means ~~[an entity that serves as a third-party~~
382 ~~broker of an appraisal service between a client and an appraiser by.]~~ a third party authorized by
383 one of the following persons to broker an appraisal of a dwelling that is collateral for a
384 residential mortgage loan:

385 ~~[(a) administering a network of appraisers to perform real estate appraisal activities for~~
386 ~~one or more clients;]~~

387 ~~[(b) (i) receiving a request for a real estate appraisal activity from a client; and]~~

388 ~~[(ii) for a fee paid by the client, entering into an agreement with one or more appraisers~~
389 ~~to perform the real estate appraisal activity contained in the request; or]~~

390 ~~[(c) any other means.]~~

391 (a) a creditor; or

392 (b) an underwriter of, or other principal in, a secondary mortgage market.

393 (5) "Appraisal management service" means ~~[a process of]:~~

394 ~~[(a) receiving a request for the performance of a real estate appraisal activity from a~~
395 ~~client; and]~~

396 ~~[(b) for a fee paid by the client, entering into an agreement with one or more appraisers~~
397 ~~to perform the real estate appraisal activity contained in the request.]~~

398 (a) recruiting, selecting, or retaining an appraiser;

399 (b) contracting with an appraiser to perform a real estate appraisal activity for a client;

400 (c) managing the appraisal process, including one or more of the following
401 administrative services:

402 (i) receiving an appraisal order or an appraisal report;

403 (ii) submitting a completed appraisal report to a client;

404 (iii) collecting a fee from a client for a service provided; or

405 (iv) paying an appraiser for a real estate appraisal activity; or

406 (d) reviewing or verifying the work of an appraiser.

407 (6) "Appraisal report" is as defined in Section 61-2g-102.

408 (7) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal
409 Financial Institutions Examination Council.

410 ~~[(7)]~~ (8) "Appraiser" means an individual who engages in a real estate appraisal
411 activity.

412 ~~[(8)]~~ (9) (a) "Appraiser panel" means ~~[a group of appraisers that are selected by an~~
413 ~~appraisal management company to perform real estate appraisal activities for the appraisal~~
414 ~~management company.]~~ a network, list, or roster of appraisers who are:

415 (i) licensed or certified in a state, territory, or the District of Columbia; and

416 (ii) approved by an appraisal management company to perform appraisals as
417 independent contractors for the appraisal management company.

418 (b) "Appraiser panel" includes an appraiser whom the appraisal management company
419 has:

420 (i) accepted for consideration for a future appraisal assignment:

421 (A) in a residential mortgage loan transaction; or

422 (B) for a secondary mortgage market participant in connection with a residential
423 mortgage loan transaction; or

424 (ii) engaged to perform an appraisal:

425 (A) in a residential mortgage loan transaction; or

426 (B) for a secondary mortgage market participant in connection with a residential
427 mortgage loan transaction.

428 ~~[(9)]~~ (10) "Board" means the Real Estate Appraiser Licensing and Certification Board
429 that is created in Section 61-2g-204.

430 ~~[(10)]~~ (11) "Client" means a person that enters into an agreement with an appraisal

431 management company for the performance of a real estate appraisal activity.

432 ~~[(11)]~~ (12) "Concurrence" means that the entities that are given a concurring role must
433 jointly agree before an action may be taken.

434 ~~[(12)]~~ (13) "Controlling person" means:

435 (a) an owner, officer, or director of an entity seeking to offer appraisal management
436 services;

437 (b) an individual employed, appointed, or authorized by an appraisal management
438 company who has the authority to:

439 (i) enter into a contractual relationship with a client for the performance of an appraisal
440 management service; and

441 (ii) enter into an agreement with an appraiser for the performance of a real estate
442 appraisal activity; or

443 (c) ~~[an individual]~~ a person who possesses, directly or indirectly, the power to direct or
444 cause the direction of the management or policies of an appraisal management company.

445 (14) "Creditor" means:

446 (a) a person who regularly extends credit that, under a written agreement, is subject to a
447 finance charge or is payable in more than four installments, not including any down payment;
448 and

449 (b) a person to whom the obligation described in Subsection (14)(a) is initially payable,
450 either on the face of the note or contract, or by agreement when there is no note or contract.

451 ~~[(13)]~~ (15) "Director" means the director of the division.

452 ~~[(14)]~~ (16) "Division" means the Division of Real Estate, created in Section [61-2-201](#),
453 of the Department of Commerce.

454 (17) "Dwelling" means a residential structure that contains up to four units, regardless
455 of whether the structure is attached to real property, including:

456 (a) an individual condominium unit;

457 (b) a cooperative unit;

458 (c) a mobile home; or

459 (d) a trailer, if the trailer is used as a residence.

460 ~~[(15)]~~ (18) "Entity" means:

461 (a) a corporation;

- 462 (b) a partnership;
- 463 (c) a sole proprietorship;
- 464 (d) a limited liability company;
- 465 (e) another business entity; or
- 466 (f) a subsidiary or unit of an entity described in Subsections ~~[(15)]~~ (18)(a) through (e).
- 467 (19) "Federally regulated appraisal management company" means an appraisal
- 468 management company that is:
- 469 (a) owned and controlled by an insured depository institution, as defined in 12 U.S.C.
- 470 Sec. 1813; and
- 471 (b) regulated by:
- 472 (i) the Office of the Comptroller of the Currency;
- 473 (ii) the Board of Governors of the Federal Reserve System; or
- 474 (iii) the Federal Deposit Insurance Corporation.
- 475 (20) "Independent contractor" means an appraiser whom an appraisal management
- 476 company treats as an independent contractor for purposes of federal income taxation.
- 477 (21) "National Registry" means the database maintained by the Appraisal
- 478 Subcommittee containing information regarding appraisal management companies that are:
- 479 (a) licensed or certified by a state, territory, or the District of Columbia; or
- 480 (b) federally regulated appraisal management companies.
- 481 ~~[(16)]~~ (22) "Person" means an individual or an entity.
- 482 (23) "Person who regularly extends credit" means a person who:
- 483 (a) extends credit, other than credit subject to the requirements of 12 C.F.R. Sec.
- 484 1026.32, to a person who has been extended credit for transactions secured by a dwelling more
- 485 than five times in:
- 486 (i) the preceding calendar year; or
- 487 (ii) the current calendar year;
- 488 (b) originates two or more credit extensions that are subject to the requirements of 12
- 489 C.F.R. Sec. 1026.32; or
- 490 (c) originates through a mortgage broker a credit extension that is subject to the
- 491 requirements of 12 C.F.R. Sec. 1026.32.
- 492 ~~[(17)]~~ (24) "Real estate appraisal activity" is as defined in Section 61-2g-102.

493 (25) "Residential mortgage loan" means the same as that term is defined in Section
494 61-2c-102.

495 (26) (a) "Secondary mortgage market participant" means:

496 (i) a guarantor or insurer of a mortgage-backed security; or

497 (ii) an underwriter or insurer of a mortgage-backed security.

498 (b) "Secondary mortgage market participant" includes an individual investor in a
499 mortgage-backed security, if the investor is also the guarantor, insurer, underwriter, or issuer of
500 the mortgage-backed security.

501 (27) "Territory" means any of the following United States territories:

502 (a) Guam;

503 (b) Northern Mariana Islands;

504 (c) Puerto Rico; or

505 (d) United States Virgin Islands.

506 Section 6. Section **61-2e-104** is amended to read:

507 **61-2e-104. Exemption.**

508 This chapter does not apply to:

509 (1) an entity that:

510 (a) exclusively employs an individual on an employer-employee basis for the
511 performance of a real estate appraisal activity in the normal course of the entity's business;

512 (b) is responsible for ensuring that the real estate appraisal activity being performed by
513 an employee is performed in accordance with applicable appraisal standards; and

514 (c) is [~~an appraisal management company that is a subsidiary owned and controlled by~~
515 ~~a financial institution regulated by a federal financial institution regulatory agency]~~ a federally
516 regulated appraisal management company;

517 (2) an individual who:

518 (a) is an appraiser; and

519 (b) in the normal course of business enters into an agreement, whether written or
520 otherwise, with another appraiser for the performance of a real estate appraisal activity that the
521 individual cannot complete for any reason, including:

522 (i) competency;

523 (ii) work load;

524 (iii) schedule; or

525 (iv) geographic location; or

526 (3) an individual who:

527 (a) in the normal course of business enters into an agreement, whether written or

528 otherwise, with an appraiser for the performance of a real estate appraisal activity; and

529 (b) under the agreement, cosigns the report of the appraiser performing the real estate

530 appraisal activity upon the completion of the real estate appraisal activity.

531 Section 7. Section **61-2e-201** is amended to read:

532 **61-2e-201. Registration required -- Qualification for registration.**

533 (1) Unless exempted under Section **61-2e-104**, an appraisal management company is

534 required to register under this chapter if, in a calendar year, the company:

535 (a) contracts with one or more appraisers for the performance of 10 or more appraisals

536 in the state [~~in a calendar year; or~~];

537 (b) oversees [~~a network or~~] an appraiser panel of more than 15 appraisers certified or

538 licensed in the state[~~]~~ in accordance with Title 61, Chapter 2g, Part 3, Licensure, Certification,

539 or Registration; or

540 (c) oversees an appraiser panel of 25 or more certified or licensed appraisers,

541 including:

542 (i) at least one appraiser certified or licensed in the state in accordance with Title 61,

543 Chapter 2g, Part 3, Licensure, Certification, or Registration; and

544 (ii) at least one appraiser certified or licensed in a state other than Utah, a territory, or

545 the District of Columbia.

546 (2) (a) For the purposes of Subsection (1):

547 (i) an appraiser is considered part of an appraisal management company's appraiser

548 panel as of the earlier of the day on which the appraisal management company:

549 (A) accepts the appraiser for the appraisal management company's consideration for

550 future appraisal assignments; or

551 (B) engages the appraiser to perform an appraisal on behalf of a client; and

552 (ii) an appraiser who is part of the appraisal management company's appraiser panel

553 under Subsection (2)(a)(i) remains a part of the appraiser panel until the earlier of the day on

554 which the appraisal management company:

555 (A) sends written notice to the appraiser removing the appraiser from the appraiser
556 panel, in accordance with Section 61-2e-306;

557 (B) receives written notice from the appraiser asking to be removed from the appraiser
558 panel; or

559 (C) receives notice of the death or incapacity of the appraiser.

560 (b) An appraisal management company shall consider an appraiser as never having
561 been removed from the appraisal management company's appraiser panel under Subsection
562 (2)(a)(ii) if, within 12 months after the day on which the appraisal management company
563 removes the appraiser, the appraisal management company:

564 (i) accepts the appraiser for consideration for a future assignment; or

565 (ii) engages the appraiser to perform an appraisal on behalf of a client.

566 ~~[(2)]~~ (3) Unless registered under this chapter or exempt under Section 61-2e-104, an
567 entity may not with regard to a real estate appraisal activity for real estate located in this state:

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

570 (b) directly or indirectly engage or attempt to perform an appraisal management
571 service; or

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

574 ~~[(3)]~~ (4) To qualify to be registered or to have registration renewed as an appraisal
575 management company under this chapter:

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

579 (b) the appraisal management company may not be owned, in whole or in part, directly
580 or indirectly, by an individual who has had an appraiser license or certificate refused, denied,
581 canceled, surrendered in lieu of revocation, or revoked by any state, territory, or the District of
582 Columbia, unless the state, territory, or District of Columbia:

583 (i) refused, denied, canceled, surrendered in lieu of revocation, or revoked the license
584 or certificate for a nonsubstantive cause, as determined by the board; and

585 (ii) reinstated the individual's license or certificate;

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

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

589 (ii) not have had a license or certificate to engage in an act related to a real estate or
590 mortgage transaction refused, denied, canceled, surrendered in lieu of revocation, or revoked in
591 ~~[this state or in another]~~ any state, territory, or the District of Columbia; and

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

595 (i) is a controlling person;

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

597 (iii) has not had a license or certificate to engage in an act related to a real estate or
598 mortgage transaction refused, denied, canceled, or revoked in ~~[this state or in another]~~ any
599 state, territory, or the District of Columbia.

600 ~~[(4)]~~ (5) This section applies without regard to whether the entity uses the term:

601 (a) "appraisal management company";

602 (b) "mortgage technology company"; or

603 (c) another name.

604 Section 8. Section **61-2e-202** is amended to read:

605 **61-2e-202. Initial registration process.**

606 (1) (a) To register under this chapter as an appraisal management company, an entity
607 shall:

608 (i) file with the division a registration application in a form prescribed by the division;

609 (ii) pay to the division a fee determined in accordance with Section [63J-1-504](#);

610 (iii) if the entity is not a resident of this state, submit an irrevocable consent for service
611 of process meeting the requirements of Subsection (3); and

612 (iv) have the application for registration approved by the division.

613 (b) The division shall approve an application if the division finds that the entity:

614 (i) complies with this Subsection (1); and

615 (ii) meets the qualifications under Section [61-2e-201](#).

616 (c) The division may, upon compliance with Title 63G, Chapter 4, Administrative

617 Procedures Act, deny the issuance of a registration to an applicant on any ground enumerated
618 in this chapter.

619 (d) If an entity pays a fee or costs to the division with a negotiable instrument or other
620 method that is not honored for payment:

621 (i) the transaction for which the payment is submitted is voidable by the division;

622 (ii) the division may reverse the transaction if payment of the applicable fee or costs is
623 not received in full; and

624 (iii) the entity's registration is automatically suspended:

625 (A) beginning the day on which the payment is due; and

626 (B) ending the day on which payment is made in full.

627 (2) A registration application shall include the following:

628 (a) the name of the entity seeking registration;

629 (b) a business address of the entity seeking registration;

630 (c) telephone contact information of the entity seeking registration;

631 (d) if the entity is not an entity domiciled in this state, the name and contact
632 information for the entity's agent for service of process in this state;

633 (e) for each individual who owns 10% or more of the entity:

634 (i) the individual's name, address, and contact information;

635 (ii) a statement of whether or not the individual has had a license or certificate to
636 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
637 revoked in this state or in another state; and

638 (iii) (A) fingerprint cards in a form acceptable to the division at the time the
639 registration application is filed; and

640 (B) consent to a criminal background check by the Utah Bureau of Criminal
641 Identification and the Federal Bureau of Investigation regarding the application;

642 (f) the name, address, and contact information for each controlling person;

643 (g) for the controlling person designated as the contact as required by Section
644 [61-2e-201](#):

645 (i) a statement of whether or not the individual has had a license or certificate to
646 engage in an act related to a real estate or mortgage transaction refused, denied, canceled,
647 surrendered in lieu of revocation, or revoked in this state or in another state, territory, or the

648 District of Columbia; and

649 (ii) (A) fingerprint cards in a form acceptable to the division at the time the registration
650 application is filed; and

651 (B) consent to a criminal background check by the Utah Bureau of Criminal
652 Identification and the Federal Bureau of Investigation regarding the application;

653 (h) provide an explanation required by:

654 (i) Section 61-2e-301, related to adding an individual to an appraiser panel;

655 (ii) Section 61-2e-302, related to the review of the work of an appraiser; and

656 (iii) Section 61-2e-303, related to recordkeeping; and

657 (i) any other information required by the board.

658 (3) An irrevocable consent for service of process required to be filed under Subsection
659 (1) shall provide that process may be served on the entity by delivering the process to the
660 director if:

661 (a) the service of process is for an action:

662 (i) in a court of this state against an entity; and

663 (ii) arising out of an act governed by this chapter; and

664 (b) a plaintiff cannot, in the exercise of due diligence, obtain personal service upon the
665 entity.

666 Section 9. Section 61-2e-203 is amended to read:

667 **61-2e-203. Criminal background check -- Conditional registration -- Changes in**
668 **ownership or controlling person.**

669 (1) The division shall request the Department of Public Safety to complete a Federal
670 Bureau of Investigation criminal background check for an individual described in Subsection
671 61-2e-202(2)(e) or (g) through the national criminal history system or any successor system.

672 (2) (a) The entity filing the application under Section 61-2e-202 shall pay the cost of
673 the criminal background check and the fingerprinting.

674 (b) Money paid to the division by an entity for the cost of a criminal background check
675 is nonlapsing.

676 (3) (a) A registration issued under Section 61-2e-202 is conditional, pending
677 completion of a criminal background check.

678 (b) (i) A registration shall be immediately and automatically revoked if a criminal

679 background check discloses that an individual described in Subsection 61-2e-202(2)(e) or (g)
680 fails to accurately disclose a criminal history involving:

- 681 (A) the appraisal industry;
- 682 (B) the appraisal management industry; or
- 683 (C) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
684 deceit.

685 (ii) If a criminal background check discloses that an individual described in Subsection
686 61-2e-202(2)(e) or (g) fails to accurately disclose a criminal history other than that described in
687 Subsection (3)(b)(i), the division shall review the application, and in accordance with rules
688 made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
689 may:

- 690 (A) place a condition on a registration;
- 691 (B) place a restriction on a registration;
- 692 (C) revoke a registration; or
- 693 (D) refer the application to the board for a decision.

694 (c) An entity whose conditional registration is revoked under Subsection (3)(b)(i) or
695 whose license is conditioned, restricted, or revoked under Subsection (3)(b)(ii) is entitled to a
696 post-revocation hearing conducted in accordance with Title 63G, Chapter 4, Administrative
697 Procedures Act, to challenge the revocation.

698 (d) The board shall decide whether relief from the revocation of a registration under
699 this Subsection (3) will be granted, except that relief from an automatic revocation under
700 Subsection (3)(b)(i) may be granted only if:

- 701 (i) the criminal history upon which the revocation is based:
 - 702 (A) did not occur; or
 - 703 (B) is the criminal history of another individual;
- 704 (ii) (A) the revocation is based on a failure to accurately disclose a criminal history;

705 and

- 706 (B) the entity has a reasonable good faith belief at the time of application that there is
707 no criminal history to be disclosed; or
- 708 (iii) the division fails to follow the prescribed procedure for the revocation.

709 (e) The board may delegate to the division the authority to conduct a post-revocation

710 hearing under Subsection (3)(d).

711 (f) If a registration is revoked or a revocation under this Subsection (3) is upheld after a
712 post-revocation hearing, the entity may not apply for a new registration until at least 12 months
713 after the day on which the registration is revoked.

714 (4) (a) An appraisal management company shall comply with this Subsection (4) if
715 there is a change in:

716 (i) an individual who owns 10% or more of the entity; or

717 (ii) the controlling person designated as the contact as required by Section [61-2e-201](#).

718 (b) If there is a change in an individual described in Subsection (4)(a), within 30 days
719 of the day on which the change occurs, the appraisal management company shall file with the
720 division:

721 (i) the individual's name, address, and contact information;

722 (ii) a statement of whether or not the individual has had a license or certificate to
723 engage in an act related to a real estate or mortgage transaction refused, denied, canceled,
724 surrendered in lieu of revocation, or revoked in this state or in another state, territory, or the
725 District of Columbia; and

726 (iii) (A) fingerprint cards in a form acceptable to the division at the time the
727 registration application is filed; and

728 (B) consent to a criminal background check by the Utah Bureau of Criminal
729 Identification and the Federal Bureau of Investigation regarding the application.

730 Section 10. Section [61-2e-205](#) is enacted to read:

731 **61-2e-205. Division service fees -- Federal registry fees.**

732 (1) The division, with the concurrence of the board, shall establish and collect fees, in
733 accordance with Section [63J-1-504](#), for services the division renders to carry out this chapter.

734 (2) The division shall:

735 (a) collect the annual registry fee established by the Appraisal Subcommittee from:

736 (i) each appraisal management company registered under this chapter; and

737 (ii) each federally regulated appraisal management company; and

738 (b) transfer the fees collected under Subsection (2)(a) to the Appraisal Subcommittee
739 on a monthly basis.

740 (3) If an appraisal management company pays a fee or cost to the division with a

741 negotiable instrument or any other payment method that is not honored, the division:

742 (a) may void the transaction for which the payment is submitted;

743 (b) may reverse the transaction, if the division does not receive full payment of the
744 applicable fee or cost; and

745 (c) shall suspend the appraisal management company's registration:

746 (i) beginning the day on which the payment is due; and

747 (ii) ending the day on which payment is made in full.

748 Section 11. Section **61-2e-302** is amended to read:

749 **61-2e-302. Adherence to standards.**

750 (1) An appraisal management company required to be registered under this chapter
751 shall have a system in place to:

752 (a) ensure that the appraisal management company only selects for a real estate
753 appraisal activity an appraiser who:

754 (i) is independent of the transaction; and

755 (ii) has the requisite education, expertise, and experience necessary to competently
756 complete the real estate appraisal activity for the particular market and property type;

757 ~~[(1)] (b) [An appraisal management company required to be registered under this~~
758 ~~chapter shall have a system in place to]~~ review the work of an appraiser who performs a real
759 estate appraisal activity for the appraisal management company on a periodic basis to ensure
760 that a real estate appraisal activity is conducted in accordance with applicable appraisal
761 standards~~[-]; and~~

762 (c) ensure that the appraisal management company conducts appraisal management
763 services in accordance with the requirements of the Truth in Lending Act, 15 U.S.C. Sec.
764 1639e(a)-(i), and the regulations thereunder.

765 (2) As part of the registration process under Part 2, Registration, an appraisal
766 management company shall biennially provide an explanation of ~~[the]~~ each system described in
767 Subsection (1) in the form prescribed by the division.

768 Section 12. Section **61-2e-401** is amended to read:

769 **61-2e-401. Division authority -- Immunity -- Transmission of reports to Appraisal**
770 **Subcommittee.**

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

772 may:

773 (i) examine any book or record of an appraisal management company registered or
 774 required to be registered under this chapter and require the appraisal management company to
 775 submit any report, information, or document to the division;

776 ~~[(i)]~~ (ii) receive and act on a complaint including:

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

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

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

784 ~~[(iii)]~~ (iv) employ one or more investigators, clerks, or other employees or agents if:

785 (A) approved by the executive director; and

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

787 ~~[(iv)]~~ (v) issue a subpoena that requires:

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

789 (B) the production of evidence.

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

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

794 (c) A failure to respond to a request by the division in an investigation under this
 795 chapter within 10 days after the day on which the ~~H→~~ **[order] request** ~~←H~~ is served is considered
 795a to be a separate

796 violation of this chapter, including:

797 (i) failing to respond to a subpoena;

798 (ii) withholding evidence; or

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

800 (2) (a) If a person is found to have violated this chapter or a rule made under this
 801 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
 802 document, or record required under this chapter, including the costs incurred to copy an

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

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

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

807 (ii) ending the day on which the costs are paid in full.

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

811 (a) without malicious intent; and

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

814 (4) Upon the Appraisal Subcommittee's request, the division shall timely transmit a
815 report to the Appraisal Subcommittee regarding the division's supervisory activities involving
816 appraisal management companies or other third-party providers of appraisals and appraisal
817 management services, including any investigation the division initiates or disciplinary action
818 the division takes.

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

820 **61-2f-202. Exempt persons and transactions.**

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

823 (i) a person who as owner or lessor performs an act described in Subsection

824 [61-2f-102\[\(+8\)\]\(20\)](#) with reference to real estate owned or leased by that person;

825 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
826 to nonresidential real estate owned or leased by the employer, performs an act described in
827 Subsection [61-2f-102\[\(+8\)\]\(20\)](#)(b) or (c);

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

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

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

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

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

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

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

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

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

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

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

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

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

855 (b) subject to Subsection [61-2f-401\(5\)](#), ~~§~~→ **[an attorney admitted to practice law in this**
 856 **state, if, while in the course of the attorney's ordinary practice in the legal field, the attorney**
 857 **provides ancillary real-estate-related services that would ordinarily require a license under this**
 858 **chapter;] services rendered by an attorney admitted to practice law in this state in performing**
 858a **the attorney's duties as an attorney; ←§**

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

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

862 (e) a public utility, officer of a public utility, or regular salaried employee of a public
 863 utility, unless performance of an act described in Subsection [61-2f-102](#)~~[(18)]~~(20) is in

864 connection with the sale, purchase, lease, or other disposition of real estate or investment in

865 real estate unrelated to the principal business activity of that public utility;

866 (f) a regular salaried employee or authorized agent working under the oversight of the

867 Department of Transportation when performing an act on behalf of the Department of

868 Transportation in connection with one or more of the following:

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

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

871 (iii) services that constitute property management; or

872 (iv) the leasing of real estate; and

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

874 behalf of the county, city, or town:

875 (i) in accordance with:

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

877 (I) Title 10, Utah Municipal Code; or

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

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

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

881 (II) Title 17, Counties; and

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

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

884 (B) the disposal of real estate;

885 (C) services that constitute property management; or

886 (D) the leasing of real estate.

887 (3) A license under this chapter is not required for an individual registered to act as a

888 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the

889 sale or the offer for sale of real estate if:

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

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

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

893 (A) the Securities Act of 1933; or

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

895 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.

896 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
897 D, Rule 506, 17 C.F.R. Sec. 230.506; and

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

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

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

901 (b) a mortgagee;

902 (c) a beneficiary under a deed of trust;

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

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

906 (5) The commission, with the concurrence of the division, may provide, by rule made
907 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
908 circumstances under which a person or transaction qualifies for an exemption that is described
909 in this section.

910 Section 14. Section **61-2f-401** is amended to read:

911 **61-2f-401. Grounds for disciplinary action.**

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

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

915 (b) making an intentional misrepresentation;

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

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

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

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

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

925 (b) representing or attempting to represent a principal broker other than the principal
926 broker with whom the person is affiliated; or

- 927 (c) representing as sales agent or having a contractual relationship similar to that of
928 sales agent with a person other than a principal broker;
- 929 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
930 to another and comes into the person's possession;
- 931 (b) commingling money described in Subsection (4)(a) with the person's own money;
932 or
- 933 (c) diverting money described in Subsection (4)(a) from the purpose for which the
934 money is received;
- 935 (5) paying or offering to pay valuable consideration, as defined by the commission, to a
936 person not licensed under this chapter, except that valuable consideration may be shared:
- 937 (a) with a principal broker of another jurisdiction; or
938 (b) as provided under:
- 939 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
940 (ii) Title 16, Chapter 11, Professional Corporation Act; or
941 (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
942 appropriate pursuant to Section [48-3a-1405](#);
- 943 (6) for a principal broker, paying or offering to pay a sales agent or associate broker
944 who is not affiliated with the principal broker at the time the sales agent or associate broker
945 earned the compensation;
- 946 (7) being incompetent to act as a principal broker, associate broker, or sales agent in
947 such manner as to safeguard the interests of the public;
- 948 (8) failing to voluntarily furnish a copy of a document to the parties before and after the
949 execution of a document;
- 950 (9) failing to keep and make available for inspection by the division a record of each
951 transaction, including:
- 952 (a) the names of buyers and sellers or lessees and lessors;
953 (b) the identification of real estate;
954 (c) the sale or rental price;
955 (d) money received in trust;
956 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
957 (f) any other information required by rule;

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

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

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

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

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

966 (a) a plea in abeyance agreement;

967 (b) a diversion agreement;

968 (c) a withheld judgment; or

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

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

973 (14) in the case of a principal broker or a branch broker, failing to exercise reasonable
974 supervision over the activities of the principal broker's or branch broker's licensed or
975 unlicensed staff;

976 (15) violating or disregarding:

977 (a) this chapter;

978 (b) an order of the commission; or

979 (c) the rules adopted by the commission and the division;

980 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
981 estate transaction;

982 (17) any other conduct which constitutes dishonest dealing;

983 (18) unprofessional conduct as defined by statute or rule;

984 (19) having one of the following suspended, revoked, surrendered, or cancelled on the
985 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
986 truthfulness:

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

988 (b) another license, registration, or certificate to engage in an occupation or profession

989 issued by this state or another jurisdiction;

990 (20) failing to respond to a request by the division in an investigation authorized under

991 this chapter within 10 days after the day on which the ~~H~~→ [order] request ←~~H~~ is served,

991a including:

992 (a) failing to respond to a subpoena;

993 (b) withholding evidence; or

994 (c) failing to produce documents or records;

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

996 (a) providing a title insurance product or service without the approval required by

997 Section 31A-2-405; or

998 (b) knowingly providing false or misleading information in the statement required by

999 Subsection 31A-2-405(2);

1000 (22) violating an independent contractor agreement between a principal broker and a

1001 sales agent or associate broker as evidenced by a final judgment of a court;

1002 (23) (a) engaging in an act of loan modification assistance that requires licensure as a

1003 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act,

1004 without being licensed under that chapter;

1005 (b) engaging in an act of foreclosure rescue without entering into a written agreement

1006 specifying what one or more acts of foreclosure rescue will be completed;

1007 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an

1008 act of foreclosure rescue by:

1009 (i) suggesting to the person that the licensee has a special relationship with the person's

1010 lender or loan servicer; or

1011 (ii) falsely representing or advertising that the licensee is acting on behalf of:

1012 (A) a government agency;

1013 (B) the person's lender or loan servicer; or

1014 (C) a nonprofit or charitable institution; or

1015 (d) recommending or participating in a foreclosure rescue that requires a person to:

1016 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee

1017 has a business relationship or financial interest;

1018 (ii) make a mortgage payment to a person other than the person's loan servicer; or

1019 (iii) refrain from contacting the person's:

- 1020 (A) lender;
- 1021 (B) loan servicer;
- 1022 (C) attorney;
- 1023 (D) credit counselor; or
- 1024 (E) housing counselor;
- 1025 (24) as a principal broker, placing a lien on real property, unless authorized by law; or
- 1026 (25) as a sales agent or associate broker, placing a lien on real property for an unpaid
- 1027 commission or other compensation related to real estate brokerage services.

1028 Section 15. Section **61-2f-407** is amended to read:

1029 **61-2f-407. Remedies and action for violations.**

1030 (1) (a) The director shall issue and serve upon a person an order directing that person to

1031 cease and desist from an act if:

1032 (i) the director has reason to believe that the person has been engaging, is about to

1033 engage, or is engaging in the act constituting a violation of this chapter; and

1034 (ii) it appears to the director that it would be in the public interest to stop the act.

1035 (b) Within 10 days after ~~[receiving]~~ the day on which the order is served, the person

1036 upon whom the order is served may request a hearing.

1037 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall

1038 remain in effect.

1039 (d) If a request for a hearing is made, the division shall follow the procedures and

1040 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

1041 (2) (a) After a hearing requested under Subsection (1), if the commission and the

1042 director agree that an act of the person violates this chapter, the director:

1043 (i) shall issue an order making the order issued under Subsection (1) permanent; and

1044 (ii) may impose another disciplinary action under Section [61-2f-404](#).

1045 (b) The director shall file suit in the name of the Department of Commerce and the

1046 Division of Real Estate, in the district court in the county in which an act described in

1047 Subsection (1) occurs or where the person resides or carries on business, to enjoin and restrain

1048 the person from violating this chapter if:

1049 (i) (A) a hearing is not requested under Subsection (1); and

1050 (B) the person fails to cease the act described in Subsection (1); or

1051 (ii) after discontinuing the act described in Subsection (1), the person again
1052 commences the act.

1053 (c) A district court of this state has jurisdiction of an action brought under this section.

1054 (d) Upon a proper showing in an action brought under this section or upon a conviction
1055 under Section 76-6-1203, the court may:

1056 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

1057 (ii) issue a restraining order or writ of mandamus;

1058 (iii) enter a declaratory judgment;

1059 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

1060 (v) order disgorgement;

1061 (vi) order rescission;

1062 (vii) impose a civil penalty not to exceed the greater of:

1063 (A) \$5,000 for each violation; or

1064 (B) the amount of any gain or economic benefit derived from a violation; and

1065 (viii) enter any other relief the court considers just.

1066 (e) The court may not require the division to post a bond in an action brought under
1067 this Subsection (2).

1068 (3) A license, certificate, or registration issued by the division to any person convicted
1069 of a violation of Section 76-6-1203 is automatically revoked.

1070 (4) A remedy or action provided in this section does not limit, interfere with, or prevent
1071 the prosecution of another remedy or action, including a criminal proceeding.

1072 Section 16. Section 61-2g-205 is amended to read:

1073 **61-2g-205. Duties of board.**

1074 (1) (a) The board shall provide technical assistance to the division relating to real estate
1075 appraisal standards and real estate appraiser qualifications.

1076 (b) The board has the powers and duties listed in this section.

1077 (2) The board shall:

1078 (a) determine the experience and education requirements appropriate for a person
1079 licensed under this chapter;

1080 (b) determine the experience and education requirements appropriate for a person
1081 certified under this chapter:

- 1082 (i) in compliance with the minimum requirements of Financial Institutions Reform,
1083 Recovery, and Enforcement Act of 1989; and
- 1084 (ii) consistent with the intent of this chapter;
- 1085 (c) determine the appraisal related acts that may be performed by:
- 1086 (i) a trainee on the basis of the trainee's education and experience;
- 1087 (ii) clerical staff; and
- 1088 (iii) a person who:
- 1089 (A) does not hold a license or certification; and
- 1090 (B) assists an appraiser licensed or certified under this chapter in providing appraisal
1091 services or consultation services;
- 1092 (d) determine the procedures for a trainee to register and to renew a registration with
1093 the division; and
- 1094 (e) develop one or more programs to upgrade and improve the experience, education,
1095 and examinations as required under this chapter.
- 1096 (3) The experience and education requirements determined by the board for a person
1097 licensed or certified under this chapter shall meet or exceed the minimum criteria established
1098 by the Appraisal Qualification Board.
- 1099 (4) The board shall:
- 1100 (a) determine the continuing education requirements appropriate for the renewal of a
1101 license, certification, or registration issued under this chapter that meet or exceed the minimum
1102 criteria established by the Appraisal Qualification Board;
- 1103 (b) develop one or more programs to upgrade and improve continuing education; and
- 1104 (c) recommend to the division one or more available continuing education courses that
1105 meet the requirements of this chapter.
- 1106 (5) (a) The board shall consider the proper interpretation or explanation of the Uniform
1107 Standards of Professional Appraisal Practice as required by Section [61-2g-403](#) when:
- 1108 (i) an interpretation or explanation is necessary in the enforcement of this chapter; and
- 1109 (ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an
1110 interpretation or explanation.
- 1111 (b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the
1112 division the appropriate interpretation or explanation that the division should adopt as a rule

1113 under this chapter.

1114 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah
1115 Administrative Rulemaking Act, and Section 61-2g-403, and with the concurrence of the
1116 division, provide for an exemption from a provision of the Uniform Standards of Professional
1117 Appraisal Practice for an activity engaged in on behalf of a governmental entity.

1118 (6) (a) The board shall conduct an administrative hearing, not delegated by the board to
1119 an administrative law judge, in connection with a disciplinary proceeding under Section
1120 61-2g-504 concerning:

1121 (i) a person required to be licensed, certified, or registered under this chapter; and

1122 (ii) the person's failure to comply with this chapter and the Uniform Standards of
1123 Professional Appraisal Practice as adopted under Section 61-2g-403.

1124 (b) The board, with the concurrence of the division, shall issue in an administrative
1125 hearing a decision that contains findings of fact and conclusions of law.

1126 (c) When a determination is made that a person required to be licensed, certified, or
1127 registered under this chapter has violated this chapter, the division shall implement disciplinary
1128 action determined through concurrence of the board and the division.

1129 (7) A member of the board is immune from a civil action or criminal prosecution for a
1130 disciplinary proceeding concerning a person required to be registered, licensed, certified, or
1131 approved as an expert under this chapter if the action is taken without malicious intent and in
1132 the reasonable belief that the action taken was taken pursuant to the powers and duties vested
1133 in a member of the board under this chapter.

1134 (8) (a) The board shall require and pass upon proof necessary to determine the honesty,
1135 competency, integrity, truthfulness, and general fitness to command the confidence of the
1136 community of an applicant for:

1137 (i) original licensure, certification, or registration; and

1138 (ii) renewal licensure, certification, or registration.

1139 (b) The board may delegate to the division the authority to:

1140 (i) review a class or category of applications for an original or renewed license,
1141 certification, or registration;

1142 (ii) determine whether an applicant meets the qualifications for licensure, certification,
1143 or registration;

1144 (iii) conduct any necessary hearing on an application for an original or renewed license,
1145 certification, or registration; and

1146 (iv) approve, approve with condition or restriction, or deny an application for an
1147 original or renewed license, certification, or registration.

1148 (c) Except as provided in Subsections (8)(d) and (e), and in accordance with Title 63G,
1149 Chapter 4, Administrative Procedures Act, an applicant who is approved with a condition or
1150 restriction or denied licensure, certification, or registration under this chapter may submit a
1151 request for agency review to the executive director of the division within 30 days after the day
1152 on which the board issues the order approving with a condition or restriction, or denying, the
1153 applicant's application.

1154 (d) If the board delegates to the division the authority to approve, approve with a
1155 condition or restriction, or deny an application without the concurrence of the board under
1156 Subsection (8)(b), and the division approves with a condition or restriction, or denies, an
1157 application for licensure, certification, or registration, the applicant may, in accordance with
1158 Title 63G, Chapter 4, Administrative Procedures Act, petition the board for a de novo review
1159 of the application within 30 days after the day on which the division issues the order approving
1160 with a condition or restriction, or denying, the applicant's application.

1161 (e) If the board approves with a condition or restriction, or denies, an applicant's
1162 application for licensure, certification, or registration after a de novo review under Subsection
1163 (8)(d), the applicant may, in accordance with Title 63G, Chapter 4, Administrative Procedures
1164 Act, petition the executive director for review of the board's approval with a condition or
1165 restriction, or denial, within 30 days after the day on which the board issues the order
1166 approving with a condition or restriction, or denying, the applicant's application.

1167 Section 17. Section **61-2g-309** is amended to read:

1168 **61-2g-309. Approval with conditions or restrictions, or denial, of licensure,**
1169 **certification, or registration.**

1170 The division may, upon compliance with Title 63G, Chapter 4, Administrative
1171 Procedures Act, on any of the grounds described in this chapter:

1172 (1) deny the issuance of a license, certification, or registration to an applicant [~~on any~~
1173 ~~of the grounds enumerated in this chapter.]; or~~

1174 (2) approve with one or more conditions or restrictions the issuance of a license,

1175 certification, or registration to an applicant.

1176 Section 18. Section **61-2g-501** is amended to read:

1177 **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

1178 (1) (a) The division may conduct a public or private investigation of the actions of:

1179 (i) a person registered, licensed, or certified under this chapter;

1180 (ii) an applicant for registration, licensure, or certification;

1181 (iii) an applicant for renewal of registration, licensure, or certification; or

1182 (iv) a person required to be registered, licensed, or certified under this chapter.

1183 (b) The division may initiate an agency action against a person described in Subsection

1184 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

1185 (i) impose disciplinary action;

1186 (ii) deny issuance to an applicant of:

1187 (A) an original registration, license, or certification; or

1188 (B) a renewal of a registration, license, or certification; or

1189 (iii) issue a cease and desist order as provided in Subsection (3).

1190 (2) (a) The division may:

1191 (i) administer an oath or affirmation;

1192 (ii) issue a subpoena that requires:

1193 (A) the attendance and testimony of a witness; or

1194 (B) the production of evidence;

1195 (iii) take evidence; and

1196 (iv) require the production of a book, paper, contract, record, document, information,

1197 or evidence relevant to the investigation described in Subsection (1).

1198 (b) The division may serve a subpoena by certified mail.

1199 (c) A failure to respond to a request by the division in an investigation authorized

1200 under this chapter within 10 days after the day on which the ~~H~~→ **[order]** **request** ←~~H~~ is served is

1200a considered to be

1201 a separate violation of this chapter, including:

1202 (i) failing to respond to a subpoena as a witness;

1203 (ii) withholding evidence; or

1204 (iii) failing to produce a book, paper, contract, document, information, or record.

1205 (d) (i) A court of competent jurisdiction shall enforce, according to the practice and

1206 procedure of the court, a subpoena issued by the division.

1207 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
1208 required by the service statutes of the state where the witness or evidence is located.

1209 (e) (i) If a person is found to have violated this chapter or a rule made under this
1210 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1211 document, information, or record required under this chapter, including the costs incurred to
1212 copy an electronic book, paper, contract, document, information, or record in a universally
1213 readable format.

1214 (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the
1215 person's license, certification, or registration is automatically suspended:

1216 (A) beginning the day on which the payment of costs is due; and

1217 (B) ending the day on which the costs are paid.

1218 (3) (a) The director shall issue and serve upon a person an order directing that person to
1219 cease and desist from an act if:

1220 (i) the director has reason to believe that the person has been engaging, is about to
1221 engage, or is engaging in the act constituting a violation of this chapter; and

1222 (ii) it appears to the director that it would be in the public interest to stop the act.

1223 (b) Within 10 days after [receiving] the day on which the order is served, the person
1224 upon whom the order is served may request a hearing.

1225 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
1226 remain in effect.

1227 (d) If a request for hearing is made, the division shall follow the procedures and
1228 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

1229 (4) (a) After a hearing requested under Subsection (3), if the board and division concur
1230 that an act of the person violates this chapter, the board, with the concurrence of the division:

1231 (i) shall issue an order making the cease and desist order permanent; and

1232 (ii) may impose another disciplinary action under Section 61-2g-502.

1233 (b) The director shall commence an action in the name of the Department of
1234 Commerce and Division of Real Estate, in the district court in the county in which an act
1235 described in Subsection (3) occurs or where the individual resides or carries on business, to
1236 enjoin and restrain the individual from violating this chapter if:

- 1237 (i) (A) a hearing is not requested under Subsection (3); and
1238 (B) the individual fails to cease the act described in Subsection (3); or
1239 (ii) after discontinuing the act described in Subsection (3), the individual again
1240 commences the act.
- 1241 (5) A remedy or action provided in this section does not limit, interfere with, or prevent
1242 the prosecution of another remedy or action, including a criminal proceeding.
- 1243 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a
1244 disciplinary action under this chapter no later than the earlier of the following:
- 1245 (i) four years after the day on which the violation is reported to the division; or
1246 (ii) 10 years after the day on which the violation occurred.
- 1247 (b) The division may commence a disciplinary action under this chapter after the time
1248 period described in Subsection (6)(a) expires if:
- 1249 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
1250 settlement; and
1251 (B) the division initiates the disciplinary action no later than one year after the day on
1252 which the judgment is issued or the settlement is final; or
1253 (ii) the division and the individual subject to a disciplinary action enter into a written
1254 stipulation to extend the time period described in Subsection (6)(a).

Legislative Review Note
Office of Legislative Research and General Counsel