

Representative Calvin R. Musselman proposes the following substitute bill:

DIVISION OF REAL ESTATE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends provisions of Title 61, Securities Division - Real Estate Division.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes certain filing fees;
- ▶ amends costs related to an on-site inspection regarding an application for registration of subdivided lands;
- ▶ amends the renewal fee for the registration of subdivided lands;
- ▶ amends provisions related to prelicensing education and continuing education for a person transacting the business of residential mortgage loans;
- ▶ amends provisions related to a criminal background check for an individual applying for a license to transact the business of residential mortgage loans;
- ▶ amends provisions regarding prohibited conduct for an individual licensed under

Title 61:

- Chapter 2c, Utah Residential Mortgage Practices and Licensing;
- Chapter 2f, Real Estate Licensing and Practices Act; or
- Chapter 2g, Real Estate Appraiser Licensing and Certification Act;



- 26 ▶ amends provisions regarding the removal of an appraiser from an appraiser
- 27 management company's appraiser panel;
- 28 ▶ amends provisions regarding the issuance and display of a license issued under the
- 29 Real Estate Licensing and Practices Act;
- 30 ▶ amends the amount of time following certain violations in which the Division of
- 31 Real Estate may commence a disciplinary action;
- 32 ▶ amends provision related to an appraiser trainee signing an appraisal report; and
- 33 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40 57-11-4, as last amended by Laws of Utah 2013, Chapter 292
- 41 57-11-6, as last amended by Laws of Utah 1990, Chapter 199
- 42 57-11-10, as last amended by Laws of Utah 2008, Chapter 382
- 43 61-2c-102, as last amended by Laws of Utah 2018, Chapter 55
- 44 61-2c-202, as last amended by Laws of Utah 2015, Chapter 262
- 45 61-2c-204.1, as last amended by Laws of Utah 2017, Chapter 182
- 46 61-2c-301, as last amended by Laws of Utah 2017, Chapter 182
- 47 61-2e-306, as last amended by Laws of Utah 2016, Chapter 384
- 48 61-2f-205, as last amended by Laws of Utah 2014, Chapter 350
- 49 61-2f-401, as last amended by Laws of Utah 2019, Chapters 337 and 475
- 50 61-2f-402, as last amended by Laws of Utah 2017, Chapter 182
- 51 61-2g-401, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 52 61-2g-405, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 53 61-2g-502, as last amended by Laws of Utah 2016, Chapter 384

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

56 Section 1. Section 57-11-4 is amended to read:

57 **57-11-4. Exemptions.**

58 (1) Unless the method of disposition is adopted for the purpose of evasion of this
59 chapter or the federal act, this chapter does not apply to an offer or disposition of an interest in
60 land:

61 (a) by a purchaser of subdivided lands for the person's own account in a single or
62 isolated transaction;

63 (b) (i) on a unit of which there is a residential, commercial, or industrial building; or

64 (ii) on a unit of which there is a legal obligation on the part of the seller to complete
65 construction of a residential, commercial, or industrial building within two years from date of
66 disposition;

67 (c) unless a person who acquires land for one of the following purposes sells that land
68 to one or more individuals as unimproved lots with no legal obligation on the part of the seller
69 to construct a residential, commercial, or industrial building on that lot within two years from
70 the date of disposition:

71 (i) if the person acquires an interest in the land for use in the business of constructing
72 residential, commercial, or industrial buildings; or

73 (ii) if the person acquires the type of land described in Subsection (1)(c)(i) for the
74 purpose of disposition to a person engaged in the business of constructing residential,
75 commercial, or industrial buildings;

76 (d) pursuant to court order;

77 (e) by a government or government agency;

78 (f) (i) if the interest lies within the boundaries of a city or a county which:

79 (A) has a planning and zoning board using at least one professional planner;

80 (B) enacts ordinances that require approval of planning, zoning, and plats, including
81 the approval of plans for streets, culinary water, sanitary sewer, and flood control; and

82 (C) will have the improvements described in Subsection (1)(f)(i)(B) plus telephone and
83 electricity; and

84 (ii) if at the time of the offer or disposition the subdivider furnishes satisfactory
85 assurance of completion of the improvements described in Subsection (1)(f)(i)(C);

86 (g) in an industrial park;

87 (h) as cemetery lots; or

88 (i) if the interest is offered as part of a camp resort as defined in Section 57-19-2 or a
89 timeshare development as defined in Section 57-19-2.

90 (2) Unless the method of disposition is adopted for the purpose of evasion of this
91 chapter or the provisions of the federal act, this chapter, except as specifically designated, does
92 not apply to an offer or disposition of:

93 (a) indebtedness secured by a mortgage or deed of trust on real estate;

94 (b) a security or unit of interest issued by a real estate investment trust regulated under
95 any state or federal statute;

96 (c) subject to Subsection (5), subdivided lands registered under the federal act and
97 which the division finds to be in the public interest to exempt from the registration
98 requirements of this chapter;

99 (d) a security currently registered with the Division of Securities; or

100 (e) an interest in oil, gas, or other minerals or a royalty interest in these assets if the
101 offer or disposition of the interest is regulated as a security by the federal government or by the
102 Division of Securities.

103 (3) (a) Notwithstanding the exemptions in Subsections (1) and (2), a person making an
104 offer or disposition of an interest in land that is located in Utah shall apply to the division for
105 an exemption before the offer or disposition is made if:

106 (i) the person is representing, in connection with the offer or disposition, the
107 availability of culinary water service to or on the subdivided land; and

108 (ii) the culinary water service is provided by a water corporation as defined in Section
109 54-2-1.

110 (b) A subdivider seeking to qualify under ~~[this]~~ the exemption described in Subsection
111 (3)(a) shall file with the division a filing fee of ~~[\$50]~~ \$100 and an application containing:

112 (i) information ~~[required by]~~ the division requires to show that the offer or disposition
113 is exempt under this section;

114 (ii) a statement as to what entity will ~~[be providing]~~ provide culinary water service and
115 the nature of that entity; and

116 (iii) (A) a copy of the entity's certificate of convenience and necessity issued by the
117 Public Service Commission; or

118 (B) evidence that the entity providing water service is exempt from the jurisdiction of

119 the Public Service Commission.

120 (4) (a) The director may by rule or order exempt a person from a requirement of this
121 chapter if the director finds that the offering of an interest in a subdivision is essentially
122 noncommercial.

123 (b) For purposes of this section, the bulk sale of subdivided lands by a subdivider to
124 another person who will become the subdivider of those lands is considered essentially
125 noncommercial.

126 (5) (a) A subdivider seeking to qualify under the exemption described in Subsection
127 (2)(c) shall file with the division:

128 (i) a copy of an effective statement of record filed with the Consumer Financial
129 Protection Bureau; and

130 (ii) a filing fee of \$100.

131 (b) If a subdivider does not qualify under the exemption described in Subsection (2)(c),
132 the division shall credit the filing fee described in Subsection (5)(a) to the filing fee required
133 for registration under this chapter.

134 (c) Nothing in this Subsection (5) exempts a subdivider from:

135 (i) Sections 57-11-16 and 57-11-17; or

136 (ii) the requirement to file an annual report with the division under Section 57-11-10.

137 (6) Notwithstanding an exemption under this section, the division:

138 (a) retains jurisdiction over an offer or disposition of an interest in land to determine
139 whether or not the exemption continues to apply; and

140 (b) may require compliance with this chapter if an exemption no longer applies.

141 Section 2. Section 57-11-6 is amended to read:

142 **57-11-6. Application for registration -- Required documents and information --**
143 **Filing fee and deposit -- Consolidation of registration of additional lands -- Reports of**
144 **changes.**

145 (1) [The] An application for registration of subdivided lands shall be filed as prescribed
146 by the division's rules and, unless otherwise provided by the division, shall include~~[, but is not~~
147 ~~limited to,]~~ the following documents and information:

148 (a) an irrevocable appointment of the division to receive service of any lawful process
149 in any noncriminal proceeding arising under this chapter against the applicant or [his] the

150 applicant's personal representative;

151 (b) a legal description of the subdivided lands offered for registration, together with a
152 map showing the division proposed or made, the dimensions of the units, and the relation of
153 the subdivided lands to existing streets, roads, and other off-site improvements;

154 (c) the states or jurisdictions, including the United States, in which an application for
155 registration or similar document has been filed, and a copy of any adverse order, judgment, or
156 decree entered in connection with the subdivided lands by the regulatory authorities in each
157 jurisdiction or by any court;

158 (d) the applicant's name and address, and the form, date, and jurisdiction of
159 organization;

160 (e) the address of each of ~~[its]~~ the applicant's offices in this state; ~~[and]~~

161 (f) the name and address of the individual to whom the applicant wishes to have the
162 division direct all communications;

163 ~~[(e) the name, address, and principal occupation for the past five years of every]~~

164 (g) for each director, officer, or general partner of the applicant or person occupying a
165 similar status or performing similar functions[;];

166 (i) the individual's name and address;

167 (ii) the individual's principal occupation for the five years before the day on which the
168 applicant files the application; and

169 (iii) the extent and nature of ~~[his]~~ the individual's interest in the applicant or the
170 subdivided lands as of a specified date within 30 days ~~[of the filing of]~~ before the day on which
171 the application is filed;

172 ~~[(f)]~~ (h) a statement, in a form acceptable to the division, of the condition of the title to
173 the subdivided lands, including encumbrances, as of a specified date within 30 days ~~[of the date~~
174 ~~of application]~~ before the day on which the application is filed, which statement:

175 (i) if the subdivided lands are situated in this state, shall be in the form of:

176 (A) a title opinion from a title insurer qualified to engage in the title insurance business
177 in this state; or

178 (B) an opinion of an attorney, licensed to practice in this state and who is not a salaried
179 employee, officer, or director of the applicant or owner;

180 (ii) if the subdivided lands are situated in another jurisdiction, shall be in the form of

181 an opinion of an attorney;

182 (A) licensed to practice in the jurisdiction where the lands are situated; and

183 (B) who is not a salaried employee, officer, or director of the applicant or owner; or

184 (iii) may be substituted by other evidence of title acceptable to the division;

185 ~~(g)~~ (i) copies of the instruments ~~[which]~~ that will be delivered to a purchaser to

186 evidence ~~[his]~~ the purchaser's interest in the subdivided lands and of the contracts and other

187 agreements ~~[which]~~ that a purchaser will be required to agree to or sign;

188 ~~(h)~~ (j) copies of the instruments by which the interest in the subdivided lands to be

189 disposed of to the purchaser was acquired and a statement of any lien or encumbrance upon the

190 title and copies of the instruments creating the lien or encumbrance, if any, with recording data,

191 but if any of these instruments contain any information relating to the consideration paid upon

192 the prior acquisition of the subdivided lands, this information may be blocked out;

193 ~~(i)~~ (k) if there is a lien or encumbrance affecting more than one unit, a statement of

194 the consequences to a purchaser of failure to discharge the lien or encumbrance and the steps, if

195 any, taken to protect the purchaser in case of this eventuality;

196 ~~(j)~~ (l) copies of instruments creating easements, restrictions, or other encumbrances

197 affecting the subdivided lands;

198 ~~(k)~~ (m) a statement of the zoning and other governmental regulations affecting the

199 use of the subdivided lands and of any existing or proposed taxes or special assessments which

200 affect the subdivided lands;

201 ~~(l)~~ (n) (i) if the subdivided lands are situated in this state, and unless all lands to be

202 disposed of are included on a subdivision plat map ~~[which has been]~~ that is filed and approved

203 ~~[pursuant to]~~ in accordance with Title 17, Counties, an opinion by an attorney, licensed to

204 practice in this state and who is not a salaried employee, officer, or director of the applicant or

205 owner, stating that:

206 (A) the proposed or made land division ~~[proposed or made]~~ does not ~~[or will not]~~

207 violate any existing state statute or local ordinance; and

208 (B) all permits or approvals have been obtained from the applicable state or local

209 authorities necessary for the subdivided lands to be put to the use for which they are offered,

210 except for those permits or approvals ~~[which]~~ that will not be granted until the subdivided

211 lands are registered under this chapter if this registration is the only condition precedent to the

212 granting of the permits or approvals; or

213 (ii) if the subdivided lands are situated in another jurisdiction, an opinion by an
214 attorney licensed to practice in that jurisdiction and who is not a salaried employee, officer, or
215 director of the applicant or owner stating, that the proposed or made land division [~~proposed or~~
216 ~~made~~] does not violate any existing statute, ordinance, or other law;

217 [~~m~~] (o) a statement of:

218 (i) the existing provisions for access, sewage disposal, water (including a supply of
219 culinary water), and other public utilities in the subdivision; and⁵]

220 (ii) if [~~they~~] the provisions described in Subsection (1)(o)(i) are not presently available
221 but are feasible, the estimated cost to the purchaser [~~of their~~] for procurement of the provisions;

222 [~~n~~] (p) a statement of [~~any~~] all improvements to be installed, the schedule for [~~their~~]
223 the completion of improvements, any provisions for maintenance of those improvements, and
224 estimated costs to the purchaser for improvements;

225 [~~o~~] (q) a statement declaring whether or not the applicant is or will be representing, in
226 connection with an offer or disposition of land, that culinary water service will be available to
227 or on the subdivided lands, and if the applicant is or will be so representing:

228 (i) a statement as to what entity will be providing the culinary water service and the
229 nature of the entity; and

230 (ii) if the entity providing the culinary water service is not a municipal system, a
231 certificate from the Public Service Commission that the entity providing the culinary water
232 service [~~either~~]:

233 (A) holds a certificate of convenience and necessity from the [~~commission;~~] Public
234 Service Commission; or

235 (B) has been found by the Public Service Commission to be exempt from [~~its~~] the
236 Public Service Commission's jurisdiction;

237 [~~p~~] (r) a narrative description of the promotional plan for the disposition of the
238 subdivided lands together with copies of all advertising material [~~which has been~~] that is
239 prepared for public distribution by any means of communication;

240 [~~q~~] (s) the proposed public offering statement;

241 [~~r~~] (t) a copy of every public report or public offering statement or similar document
242 filed with or issued by any agency of the United States or any state or jurisdiction; and

243 ~~[(s)]~~ (u) any other reasonable information, including any current financial statement,
244 ~~[which]~~ that the division by ~~[its rules]~~ rule requires for the protection of purchasers.

245 (2) (a) Each application for registration of subdivided lands shall be accompanied by a
246 filing fee of \$500 for up to 30 units, plus an additional \$3 per unit for each unit over 30 units
247 up to a maximum of \$2,500 for each application~~[-, and a deposit of \$300 to cover all on-site~~
248 ~~inspection costs and expenses incurred by the division. If the \$300 deposit is insufficient to~~
249 ~~meet the estimated costs and expenses of the on-site inspection, the applicant or owner shall~~
250 ~~make an additional deposit sufficient to cover the estimated costs and expenses before the~~
251 ~~division will inspect the subdivided lands. The deposit shall be refunded to the extent it is not~~
252 ~~used, together with an itemized statement from the division of all amounts it has used].~~

253 (b) If the division determines that an on-site inspection of the subdivided lands
254 proposed for registration to be offered for disposition is necessary, the applicant shall pay the
255 division the actual amount of costs the division incurs performing the on-site inspection.

256 (3) In the event the subdivider registers additional subdivided lands to be offered for
257 disposition, ~~[he]~~ the subdivider may consolidate the subsequent registration with any earlier
258 registration offering subdividing lands for disposition under the same promotional plan by
259 filing an application for consolidation:

260 (a) accompanied by an additional fee of \$200, plus \$3 for each additional unit, up to a
261 maximum of \$1,250 for each application~~[-]; and~~

262 (b) if at the time the subdivider makes the application, all of the information required
263 by Subsection (1) of this section ~~[has been brought]~~ is current and covers the additional
264 subdivided lands.

265 (4) ~~[The]~~ A subdivider shall report any material change in the information contained in
266 ~~[an]~~ the subdivider's application for registration or consolidation within 15 days ~~[from the time]~~
267 after the day on which that change becomes known to ~~[him]~~ the subdivider.

268 Section 3. Section **57-11-10** is amended to read:

269 **57-11-10. Renewal report -- Renewal fee -- Examination by division -- Annual**
270 **reports.**

271 (1) (a) Within 30 days after each annual anniversary date of the division's registration
272 of subdivided lands, the subdivider shall file a renewal report in the form ~~[prescribed by the~~
273 ~~division]~~ the division prescribes together with a renewal fee of ~~[\$200]~~ \$50.

274 (b) The report shall reflect ~~[any]~~ all material changes ~~[in]~~ to information contained in
275 the original application for registration, including any change in ownership of the subdivider.

276 (c) The report shall also indicate the number of units in the subdivision that have been
277 disposed of since the division registered the subdivided lands.

278 (2) (a) The division may, upon the filing of a renewal report, initiate a renewal
279 examination of the kind described in Section 57-11-8.

280 (b) If the division determines upon inquiry and examination that the subdivider fails to
281 meet any of the requirements of Section 57-11-8 ~~[have not been met, it]~~, the division shall
282 notify the subdivider that the subdivider must correct the report, the promotional plan, or the
283 plan of disposition ~~[must be corrected]~~ within 20 days, or any additional time allowed by the
284 division, after the day on which the subdivider receives the notice.

285 (c) If the subdivider does not meet the requirements ~~[are not met]~~ within the time
286 allowed, the division may, notwithstanding the provisions of Section 57-11-13 and without
287 further notice, issue a cease and desist order according to the emergency procedures of Title
288 63G, Chapter 4, Administrative Procedures Act, barring further sale of the subdivided lands.

289 (3) The division may permit the filing of annual reports within 30 days after the
290 anniversary date of the consolidated registration in lieu of the anniversary date of the original
291 registration.

292 Section 4. Section 61-2c-102 is amended to read:

293 **61-2c-102. Definitions.**

294 (1) As used in this chapter:

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

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

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

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

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

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

304 (e) "Balloon payment" means a required payment in a mortgage transaction that:

- 305 (i) results in a greater reduction in the principle of the mortgage than a regular
306 installment payment; and
- 307 (ii) is made during or at the end of the term of the loan.
- 308 (f) "Branch lending manager" means an individual who is:
- 309 (i) licensed as a lending manager; and
- 310 (ii) designated in the nationwide database by the individual's sponsoring entity as being
311 responsible to work from a branch office and to supervise the business of residential mortgage
312 loans that is conducted at the branch office.
- 313 (g) "Branch office" means a licensed entity's office:
- 314 (i) for the transaction of the business of residential mortgage loans regulated under this
315 chapter;
- 316 (ii) other than the main office of the licensed entity; and
- 317 (iii) that operates under:
- 318 (A) the same business name as the licensed entity; or
- 319 (B) another trade name that is registered with the division under the entity license.
- 320 (h) "Business day" means a day other than:
- 321 (i) a Saturday;
- 322 (ii) a Sunday; or
- 323 (iii) a federal or state holiday.
- 324 (i) (i) "Business of residential mortgage loans" means for compensation or in the
325 expectation of compensation to:
- 326 (A) engage in an act that makes an individual a mortgage loan originator;
- 327 (B) make or originate a residential mortgage loan;
- 328 (C) directly or indirectly solicit a residential mortgage loan for another;
- 329 (D) unless exempt under Section [61-2c-105](#) or excluded under Subsection (1)(i)(ii),
330 render services related to the origination of a residential mortgage loan including:
- 331 (I) preparing a loan package;
- 332 (II) communicating with the borrower or lender;
- 333 (III) advising on a loan term;
- 334 (IV) receiving, collecting, or distributing information common for the processing or
335 underwriting of a loan in the mortgage industry; or

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

338 (E) engage in loan modification assistance.

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

340 (A) ownership of an entity that engages in the business of residential mortgage loans if
341 the owner does not personally perform the acts listed in Subsection (1)(i)(i);

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

343 (I) a loan wholesaler;

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

345 (III) a loan closer; or

346 (IV) funding a loan; or

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

349 (j) "Certified education provider" means a person who is certified under Section
350 [61-2c-204.1](#) to provide [~~one or more of the following: (i)~~] Utah-specific prelicensing
351 education[~~; or~~].

352 [~~(ii) Utah-specific continuing education.~~]

353 (k) "Closed-end" means a loan:

354 (i) with a fixed amount borrowed; and

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

356 (l) "Commission" means the Residential Mortgage Regulatory Commission created in
357 Section [61-2c-104](#).

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

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

362 (i) services;

363 (ii) personal or real property; or

364 (iii) another thing of value.

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

367 (p) "Continuing education" means education [~~taken by an individual licensed under~~
368 ~~this chapter~~] an individual takes in order to meet the education requirements imposed by
369 Sections 61-2c-204.1 and 61-2c-205 to activate, renew, or reinstate a license under this chapter.

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

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

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

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

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

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

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

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

382 (A) a manager;

383 (B) a managing partner;

384 (C) a director;

385 (D) an executive officer; or

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

387 Subsection (1)(r)(ii).

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

389 (t) "Director" means the director of the division.

390 (u) "Division" means the Division of Real Estate.

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

393 (i) a condominium unit;

394 (ii) a cooperative unit;

395 (iii) a manufactured home; or

396 (iv) a house.

397 (w) "Employee":

398 (i) means an individual:

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

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

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

405 (x) "Entity" means:

406 (i) a corporation;

407 (ii) a limited liability company;

408 (iii) a partnership;

409 (iv) a company;

410 (v) an association;

411 (vi) a joint venture;

412 (vii) a business trust;

413 (viii) a trust; or

414 (ix) another organization.

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

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

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

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

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

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

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

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

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

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

429 loans.

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

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

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

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

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

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

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

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

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

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

444 (V) an addition of collateral;

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

446 (VII) an addition of a cosigner; or

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

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

449 loan; or

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

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

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

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

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

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

458 (Aa) a purchase;

459 (Bb) a refinance;

- 460 (Cc) a loan modification assistance; or
- 461 (Dd) a foreclosure rescue; or
- 462 (III) directly or indirectly solicits a residential mortgage loan for another person; and
- 463 (B) is licensed as a mortgage loan originator in accordance with this chapter.
- 464 (ii) "Mortgage loan originator" does not include a person who:
 - 465 (A) is described in Subsection (1)(gg)(i), but who performs exclusively administrative
 - 466 or clerical tasks as described in Subsection (1)(i)(ii)(A);
 - 467 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
 - 468 (II) performs only real estate brokerage activities; and
 - 469 (III) receives no compensation from:
 - 470 (Aa) a lender;
 - 471 (Bb) a lending manager; or
 - 472 (Cc) an agent of a lender or lending manager; or
 - 473 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
 - 474 11 U.S.C. Sec. 101(53D).
 - 475 (hh) "Nationwide database" means the Nationwide Mortgage Licensing System and
 - 476 Registry, authorized under federal licensing requirements.
 - 477 (ii) "Nontraditional mortgage product" means a mortgage product other than a 30-year
 - 478 fixed rate mortgage.
 - 479 (jj) "Person" means an individual or entity.
 - 480 (kk) "Prelicensing education" means education taken by an individual seeking to be
 - 481 licensed under this chapter in order to meet the education requirements imposed by Section
 - 482 [61-2c-204.1](#) or [61-2c-206](#) for an individual to obtain a license under this chapter.
 - 483 (ll) "Principal lending manager" means an individual:
 - 484 (i) licensed as a lending manager under Section [61-2c-206](#); and
 - 485 (ii) identified in the nationwide database by the individual's sponsoring entity as the
 - 486 entity's principal lending manager.
 - 487 (mm) "Prospective borrower" means a person applying for a mortgage from a person
 - 488 who is required to be licensed under this chapter.
 - 489 (nn) "Record" means information that is:
 - 490 (i) prepared, owned, received, or retained by a person; and

- 491 (ii) (A) inscribed on a tangible medium; or
- 492 (B) (I) stored in an electronic or other medium; and
- 493 (II) in a perceivable and reproducible form.
- 493a ~~§~~ → ~~[(oo)]~~ **"Referral" means the same as that term is described in 12 C.F.R. Sec.**
- 493b **1024.14(f).** ← ~~§~~
- 494 ~~§~~ → ~~[(oo)]~~ **(pp)** ← ~~§~~ **"Referral fee":**
- 495 ~~§~~ → ~~(i) means any fee, kickback, other compensation, or thing of value tendered for a~~
- 496 ~~referral of business or a service incident to or part of a residential mortgage loan transaction;~~
- 497 ~~and~~
- 498 ~~§~~ → ~~(ii) does not include:~~
- 499 ~~§~~ → ~~(A) a payment made by a licensed entity to an individual employed by the entity under~~
- 500 ~~a contractual incentive program according to rules made by the division in accordance with~~
- 501 ~~Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or~~
- 502 ~~§~~ → ~~(B) a payment made for reasonable promotional and educational activities that is not~~
- 503 ~~conditioned on the referral of business and is not used to pay expenses that a person in a~~
- 504 ~~position to refer settlement services or business related to the settlement services would~~
- 505 ~~otherwise incur:~~
- 506 ~~§~~ → ~~[(pp)]~~ ~~(qq)~~ ← ~~§~~ ~~(oo)~~ ← ~~§~~ **"Residential mortgage loan" means an extension of credit, if:**
- 507 (i) the loan or extension of credit is secured by a:
- 508 (A) mortgage;
- 509 (B) deed of trust; or
- 510 (C) consensual security interest; and
- 511 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
- 512 (1) ~~§~~ → ~~[(pp)]~~ ~~(qq)~~ ← ~~§~~ ~~(oo)~~ ← ~~§~~ (i):
- 513 (A) is on a dwelling located in the state; and
- 514 (B) is created with the consent of the owner of the residential real property.
- 514a ~~§~~ → **(pp) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules made thereunder.**
- 514b ← ~~§~~
- 515 ~~§~~ → ~~§~~ → ~~[f]~~ ← ~~§~~ ~~(qq)~~ ~~§~~ → ~~[(rr)]~~ ← ~~§~~ ← ~~§~~ **"Settlement" means the time at which each of the**
- 515a following is complete:
- 516 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the
- 517 escrow or closing office each document required by:
- 518 (A) the real estate purchase contract;
- 519 (B) the lender;
- 520 (C) the title insurance company;
- 521 (D) the escrow or closing office;

522 (E) the written escrow instructions; or

523 (F) applicable law;

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

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

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

527 money that the seller is required to pay.

528 ~~H~~→ ~~S~~→ [H] ←~~S~~ (rr) ~~S~~→ [~~H~~(~~ss~~)] ←~~S~~ ←~~H~~ "Settlement services" means a service provided in
528a1 connection with a real

528a estate

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

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

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

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

533 and the processing of a federally related mortgage.

534 ~~H~~→ ~~S~~→ [H] ←~~S~~ (ss) ~~S~~→ [~~H~~(~~tt~~)] ←~~S~~ ←~~H~~ "Sponsorship" means an association in accordance
534a with Section [61-2c-209](#)

535 between an individual licensed under this chapter and an entity licensed under this chapter.

536 ~~H~~→ ~~S~~→ [H] ←~~S~~ (tt) ~~S~~→ [~~H~~(~~uu~~)] ←~~S~~ ←~~H~~ "State" means:

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

538 (ii) the District of Columbia; or

539 (iii) the Commonwealth of Puerto Rico.

540 ~~H~~→ ~~S~~→ [H] ←~~S~~ (uu) ~~S~~→ [~~H~~(~~vv~~)] ←~~S~~ ←~~H~~ "Uniform state test" means the uniform state
540a1 content section of the

540a qualified

541 written test developed by the nationwide database.

542 ~~H~~→ ~~S~~→ [H] ←~~S~~ (vv) ~~S~~→ [~~H~~(~~ww~~)] ←~~S~~ ←~~H~~ "Unique identifier" means the same as that term
542a1 is defined in 12 U.S.C.

542a Sec. 5102.

543 ~~H~~→ ~~S~~→ [H] ←~~S~~ (ww) ~~S~~→ [~~H~~(~~xx~~)] ←~~S~~ ←~~H~~ "Utah-specific" means an educational
543a1 requirement under this chapter

543a that relates

544 specifically to Utah.

545 (2) (a) If a term not defined in this section is defined by rule, the term shall have the

546 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,

547 Utah Administrative Rulemaking Act.

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

550 Section 5. Section **61-2c-202** is amended to read:

551 **61-2c-202. Licensure procedures.**

552 (1) To apply for licensure under this chapter an applicant shall in a manner provided by

553 the division by rule:

554 (a) if the applicant is an entity, submit:

555 (i) through the nationwide database, a licensure statement that:

556 (A) lists any name under which the entity will transact business in this state;

557 (B) lists the address of the principal business location of the entity;

558 (C) identifies each control person for the entity;

559 (D) identifies each jurisdiction in which the entity is registered, licensed, or otherwise
560 regulated in the business of residential mortgage loans;

561 (E) discloses any adverse administrative action taken by an administrative agency
562 against the entity or a control person for the entity; and

563 (F) discloses any history of criminal proceedings that involves a control person of the
564 entity; and

565 (ii) a notarized letter to the division that:

566 (A) is on the entity's letterhead;

567 (B) is signed by the entity's owner, director, or president;

568 (C) authorizes the principal lending manager to do business under the entity's name and
569 under each of the entity's licensed trade names, if any; and

570 (D) includes any information required by the division by rule;

571 (b) if the applicant is an individual:

572 (i) submit a licensure statement that identifies the entity with which the applicant is
573 sponsored;

574 (ii) authorize periodic criminal background checks through the nationwide database, at
575 times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah

576 Administrative Rulemaking Act, accessing[: ~~(A) the Utah Bureau of Criminal Identification, if
577 the nationwide database is able to obtain information from the Utah Bureau of Criminal
578 Identification; and (B)] the Federal Bureau of Investigation;~~

579 (iii) submit evidence using a method approved by the division by rule of having
580 successfully completed approved prelicensing education in accordance with Section
581 [61-2c-204.1](#);

582 (iv) submit evidence using a method approved by the division by rule of having
583 successfully passed any required licensing examination in accordance with Section

584 [61-2c-204.1](#);

585 (v) submit evidence using a method approved by the division by rule of having
586 successfully registered in the nationwide database, including paying a fee required by the
587 nationwide database; and

588 (vi) authorize the division to obtain independent credit reports:

589 (A) through a consumer reporting agency described in Section 603(p) of the Fair Credit
590 Reporting Act, 15 U.S.C. Sec. 1681a; and

591 (B) at times provided by rule that the division makes in accordance with Title 63G,
592 Chapter 3, Utah Administrative Rulemaking Act; and

593 (c) pay to the division:

594 (i) an application fee established by the division in accordance with Section [63J-1-504](#);
595 and

596 (ii) the reasonable expenses incurred by the division in processing the application for
597 licensure.

598 (2) (a) Upon receiving an application, the division, with the concurrence of the
599 commission, shall determine whether the applicant:

600 (i) meets the qualifications for licensure; and

601 (ii) complies with this section.

602 (b) If the division, with the concurrence of the commission, determines that an
603 applicant meets the qualifications for licensure and complies with this section, the division
604 shall issue the applicant a license.

605 (c) If the division, with the concurrence of the commission, determines that the
606 division requires more information to make a determination under Subsection (2)(a), the
607 division may:

608 (i) hold the application pending further information about an applicant's criminal
609 background or history related to adverse administrative action in any jurisdiction; or

610 (ii) issue a conditional license:

611 (A) pending the completion of a criminal background check; and

612 (B) subject to probation, suspension, or revocation if the criminal background check
613 reveals that the applicant did not truthfully or accurately disclose on the licensing application a
614 criminal history or other history related to adverse administrative action.

- 615 (3) (a) The commission may delegate to the division the authority to:
616 (i) review a class or category of application for an initial or renewed license;
617 (ii) determine whether an applicant meets the qualifications for licensure;
618 (iii) conduct a necessary hearing on an application; and
619 (iv) approve or deny a license application without concurrence by the commission.

620 (b) If the commission delegates to the division the authority to approve or deny an
621 application without concurrence by the commission and the division denies an application for
622 licensure, the applicant who is denied licensure may petition the commission for a de novo
623 review of the application.

624 (c) An applicant who is denied licensure under Subsection (3)(b) may seek agency
625 review by the executive director only after the commission reviews the division's denial of the
626 applicant's application.

627 (d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4,
628 Administrative Procedures Act, an applicant who is denied licensure under this chapter may
629 submit a request for agency review to the executive director within 30 days following the day
630 on which the commission order denying the licensure is issued.

631 Section 6. Section **61-2c-204.1** is amended to read:

632 **61-2c-204.1. Education providers -- Education requirements -- Examination**
633 **requirements.**

634 (1) As used in this section:

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

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

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

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

- 644 (i) certification criteria and procedures to become a certified education provider; and
645 (ii) standards of conduct for a certified education provider.

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

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

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

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

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

654 or

655 (ii) approve[~~-(A)~~] Utah-specific prelicensing education[~~;-or~~].

656 [~~(B) Utah-specific continuing education courses.~~]

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

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

660 (A) before taking the licensing examinations required by Subsection (4);

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

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

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

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

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

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

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

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

676 (ii) the subject matters of the prelicensing education required under this section and

677 Section 61-2c-206, including online education or distance learning options;

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

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

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

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

689 (4) (a) The division may not license an individual under this chapter unless that
690 individual first passes the qualified written national test developed by the nationwide database
691 that includes the uniform state test content that:

692 (i) meets the minimum federal licensing requirements; and

693 (ii) is administered by an approved examination provider.

694 (b) The commission, with the concurrence of the division, shall determine the
695 requirements for the lending manager licensing examination required under Section 61-2c-206
696 that tests the applicant's knowledge of:

697 (i) fundamentals of the English language;

698 (ii) arithmetic;

699 (iii) provisions of this chapter;

700 (iv) advanced residential mortgage principles and practices; and

701 (v) other aspects of Utah law the commission, with the concurrence of the division,
702 determines appropriate.

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

706 (5) When reasonably practicable, the commission and the division shall make the
707 Utah-specific education requirements described in this section available electronically through

708 one or more distance education methods approved by the commission and division.

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

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

714 (ii) upon a finding of reasonable cause.

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

719 Section 7. Section **61-2c-301** is amended to read:

720 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

723 (a) ~~§~~ → ~~[give or receive a referral fee]~~ violate Section 8 of RESPA ← ~~§~~ ;

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

725 (i) that is excessive; or

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

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

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

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

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

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

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

737 (i) make a false statement or representation;

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

- 739 (iii) knowingly permit false information to be submitted by any party;
- 740 (e) give or receive compensation or anything of value, or withhold or threaten to
- 741 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
- 742 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
- 743 violation of this section for a licensee to withhold payment because of a bona fide dispute
- 744 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
- 745 of Professional Appraisal Practice;
- 746 (f) violate or not comply with:
- 747 (i) this chapter;
- 748 (ii) an order of the commission or division; or
- 749 (iii) a rule made by the division;
- 750 (g) fail to respond within the required time period to:
- 751 (i) a notice or complaint of the division; or
- 752 (ii) a request for information from the division;
- 753 (h) make false representations to the division, including in a licensure statement;
- 754 (i) [~~for a residential mortgage loan transaction beginning on or after January 1, 2004;~~]
- 755 engage in the business of residential mortgage loans with respect to the transaction if the
- 756 person also acts in any of the following capacities with respect to the same residential mortgage
- 757 loan transaction:
- 758 (i) appraiser;
- 759 (ii) escrow agent;
- 760 (iii) real estate agent;
- 761 (iv) general contractor; or
- 762 (v) title insurance producer;
- 763 (j) engage in unprofessional conduct as defined by rule;
- 764 (k) engage in an act or omission in transacting the business of residential mortgage
- 765 loans that constitutes dishonesty, fraud, or misrepresentation;
- 766 (l) engage in false or misleading advertising;
- 767 (m) (i) fail to account for money received in connection with a residential mortgage
- 768 loan;
- 769 (ii) use money for a different purpose from the purpose for which the money is

770 received; or

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

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

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

777 (i) evade this chapter; or

778 (ii) assist another person to evade this chapter;

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

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

784 (i) unlicensed staff; or

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

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

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

789 (i) provide a title insurance product or service without the approval required by Section
790 [31A-2-405](#); or

791 (ii) knowingly provide false or misleading information in the statement required by
792 Subsection [31A-2-405\(2\)](#);

793 (t) represent to the public that the person can or will perform any act of a mortgage
794 loan originator if that person is not licensed under this chapter because the person is exempt
795 under Subsection [61-2c-105\(4\)](#), including through:

796 (i) advertising;

797 (ii) a business card;

798 (iii) stationery;

799 (iv) a brochure;

800 (v) a sign;

- 801 (vi) a rate list; or
- 802 (vii) other promotional item;
- 803 (u) (i) engage in an act of loan modification assistance without being licensed under
- 804 this chapter;
- 805 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
- 806 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under
- 807 that chapter;
- 808 (iii) engage in an act of loan modification assistance without entering into a written
- 809 agreement specifying which one or more acts of loan modification assistance will be
- 810 completed;
- 811 (iv) request or require a person to pay a fee before obtaining:
- 812 (A) a written offer for a loan modification from the person's lender or servicer; and
- 813 (B) the person's written acceptance of the offer from the lender or servicer;
- 814 (v) induce a person seeking a loan modification to hire the licensee to engage in an act
- 815 of loan modification assistance by:
- 816 (A) suggesting to the person that the licensee has a special relationship with the
- 817 person's lender or loan servicer; or
- 818 (B) falsely representing or advertising that the licensee is acting on behalf of:
- 819 (I) a government agency;
- 820 (II) the person's lender or loan servicer; or
- 821 (III) a nonprofit or charitable institution;
- 822 (vi) recommend or participate in a loan modification that requires a person to:
- 823 (A) transfer title to real property to the licensee or to a third-party with whom the
- 824 licensee has a business relationship or financial interest;
- 825 (B) make a mortgage payment to a person other than the person's loan servicer; or
- 826 (C) refrain from contacting the person's:
- 827 (I) lender;
- 828 (II) loan servicer;
- 829 (III) attorney;
- 830 (IV) credit counselor; or
- 831 (V) housing counselor; or

832 (vii) for an agreement for loan modification assistance entered into on or after May 11,
 833 2010, engage in an act of loan modification assistance without offering in writing to the person
 834 entering into the agreement for loan modification assistance a right to cancel the agreement
 835 within three business days after the day on which the person enters the agreement;

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

839 (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse
 840 Mortgage Act; or

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

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

844 (ii) the Federal National Mortgage Association.

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

848 ~~[(a) be convicted;]~~

849 ~~[(b) plead guilty or nolo contendere;]~~

850 ~~[(c) enter a plea in abeyance; or]~~

851 ~~[(d) be subjected to a criminal disposition similar to the ones described in Subsections~~
 852 ~~(2)(a) through (c).]~~

853 (2) Regardless of whether the crime is related to the business of residential mortgage
 854 loans, it is a violation of this chapter for a licensee or a person who is a certified education
 855 provider to:

856 (a) be convicted of:

857 (i) a felony; or

858 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:

859 (A) a class A misdemeanor;

860 (B) a class B misdemeanor; or

861 (C) a criminal offense comparable to a class A or class B misdemeanor;

862 (b) plead guilty or nolo contendere to:

- 863 (i) a felony; or
- 864 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 865 (A) a class A misdemeanor;
- 866 (B) a class B misdemeanor; or
- 867 (C) a criminal offense comparable to a class A or class B misdemeanor; or
- 868 (c) enter into a plea in abeyance agreement in relation to:
- 869 (i) a felony; or
- 870 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 871 (A) a class A misdemeanor;
- 872 (B) a class B misdemeanor; or
- 873 (C) a criminal offense comparable to a class A or class B misdemeanor.
- 874 (3) A lending manager does not violate Subsection (1)(q) if:
- 875 (a) in contravention of the lending manager's written policies and instructions, an
- 876 affiliated licensee of the lending manager violates:
- 877 (i) this chapter; or
- 878 (ii) rules made by the division under this chapter;
- 879 (b) the lending manager established and followed reasonable procedures to ensure that
- 880 affiliated licensees receive adequate supervision;
- 881 (c) upon learning of a violation by an affiliated licensee, the lending manager
- 882 attempted to prevent or mitigate the damage;
- 883 (d) the lending manager did not participate in or ratify the violation by an affiliated
- 884 licensee; and
- 885 (e) the lending manager did not attempt to avoid learning of the violation.
- 886 (4) Notwithstanding Subsection (1)(m)(iii), a licensee may, upon compliance with
- 887 Section [70D-2-305](#), charge a reasonable cancellation fee for work done originating a mortgage
- 888 if the mortgage is not closed.
- 889 (5) (a) Except as provided in Subsection (5)(b), a person transacting the business of
- 890 residential mortgage loans in this state shall provide a prospective borrower a copy of each
- 891 appraisal and any other written valuation developed in connection with an application for credit
- 892 that is to be secured by a first lien on a dwelling on or before the earlier of:
- 893 (i) as soon as reasonably possible after the appraisal or other valuation is complete; or

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

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

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

899 (ii) at the settlement.

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

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

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

912 Section 8. Section **61-2e-306** is amended to read:

913 **61-2e-306. Removal of appraiser from appraisal panel.**

914 (1) [~~Except within the first 30 days after the day on which an appraiser is first added to~~
915 ~~the appraiser panel of an appraisal management company, an] An appraisal management
916 company may not remove the appraiser from [~~its~~] the appraisal management company's
917 appraiser panel, or otherwise refuse to assign a request for a real estate appraisal activity to the
918 appraiser without:~~

919 (a) notifying the appraiser in writing of:

920 (i) the reason why the appraiser is being removed from the appraiser panel of the
921 appraisal management company; and

922 (ii) the nature of the alleged conduct or violation if the appraiser is being removed from
923 the appraiser panel for:

924 (A) illegal conduct; or

925 (B) a violation of the applicable appraisal standards; and
926 (b) providing an opportunity for the appraiser to respond to the notification under
927 Subsection (1)(a).

928 (2) The board, with the concurrence of the division, may establish by rule made in
929 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements
930 consistent with this section regarding the removal of an appraiser from an appraisal panel.

931 Section 9. Section **61-2f-205** is amended to read:

932 **61-2f-205. Form of license -- Display of license.**

933 ~~[(1)]~~ The division shall issue to a licensee a ~~[wall]~~ license that contains:

934 ~~[(a)]~~ (1) the name and address of the licensee;

935 ~~[(b)]~~ (2) the seal of the state; and

936 ~~[(c)]~~ (3) any other matter prescribed by the division.

937 ~~[(2) The division shall send, by mail or email, the license described in Subsection (1) to~~
938 ~~the licensee at the mailing address or email address furnished by the licensee.]~~

939 ~~[(3) A principal broker shall keep the license of the principal broker and the license of~~
940 ~~any associate broker or sales agent affiliated with the principal broker in the office in which the~~
941 ~~licensee works to be made available on request.]~~

942 Section 10. Section **61-2f-401** is amended to read:

943 **61-2f-401. Grounds for disciplinary action.**

944 The following acts are unlawful and grounds for disciplinary action for a person
945 licensed or required to be licensed under this chapter:

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

947 (b) making an intentional misrepresentation;

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

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

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

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

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

956 broker;

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

959 (c) representing as sales agent or having a contractual relationship similar to that of
960 sales agent with a person other than a principal broker;

961 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
962 to another and comes into the person's possession;

963 (b) commingling money described in Subsection (4)(a) with the person's own money;

964 or

965 (c) diverting money described in Subsection (4)(a) from the purpose for which the
966 money is received;

967 (5) paying or offering to pay valuable consideration~~[, as defined by the commission,]~~ to
968 a person not licensed under this chapter, except that valuable consideration may be shared:

969 (a) with a principal broker of another jurisdiction; or

970 (b) as provided under:

971 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

972 (ii) Title 16, Chapter 11, Professional Corporation Act; or

973 (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
974 appropriate pursuant to Section [48-3a-1405](#);

975 (6) for a principal broker, paying or offering to pay a sales agent or associate broker
976 who is not affiliated with the principal broker at the time the sales agent or associate broker
977 earned the compensation;

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

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

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

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

985 (b) the identification of real estate;

986 (c) the sale or rental price;

- 987 (d) money received in trust;
- 988 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- 989 (f) any other information required by rule;
- 990 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
- 991 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 992 ~~[(11) being convicted, within five years of the most recent application for licensure, of~~
- 993 ~~a criminal offense involving moral turpitude regardless of whether:]~~
- 994 ~~[(a) the criminal offense is related to real estate; or]~~
- 995 ~~[(b) the conviction is based upon a plea of nolo contendere;]~~
- 996 ~~[(12) having, within five years of the most recent application for a license under this~~
- 997 ~~chapter, entered any of the following related to a criminal offense involving moral turpitude:]~~
- 998 ~~[(a) a plea in abeyance agreement;]~~
- 999 ~~[(b) a diversion agreement;]~~
- 1000 ~~[(c) a withheld judgment; or]~~
- 1001 ~~[(d) an agreement in which a charge was held in suspense during a period of time when~~
- 1002 ~~the licensee was on probation or was obligated to comply with conditions outlined by a court;]~~
- 1003 (11) regardless of whether the crime is related to the business of real estate:
- 1004 (a) be convicted of:
- 1005 (i) a felony; or
- 1006 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 1007 (A) a class A misdemeanor;
- 1008 (B) a class B misdemeanor; or
- 1009 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1010 (b) plead guilty or nolo contendere to:
- 1011 (i) a felony; or
- 1012 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 1013 (A) a class A misdemeanor;
- 1014 (B) a class B misdemeanor; or
- 1015 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1016 (c) enter into a plea in abeyance agreement in relation to:
- 1017 (i) a felony; or

- 1018 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 1019 (A) a class A misdemeanor;
- 1020 (B) a class B misdemeanor; or
- 1021 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1022 ~~[(13)]~~ (12) advertising the availability of real estate or the services of a licensee in a
- 1023 false, misleading, or deceptive manner;
- 1024 ~~[(14)]~~ (13) in the case of a principal broker or a branch broker, failing to exercise
- 1025 active and reasonable supervision, as the commission may define by rule made in accordance
- 1026 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the
- 1027 principal broker's or branch broker's licensed or unlicensed staff;
- 1028 ~~[(15)]~~ (14) violating or disregarding:
- 1029 (a) this chapter;
- 1030 (b) an order of the commission; or
- 1031 (c) the rules adopted by the commission and the division;
- 1032 ~~[(16)]~~ (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a
- 1033 real estate transaction;
- 1034 ~~[(17)]~~ (16) any other conduct which constitutes dishonest dealing;
- 1035 ~~[(18) unprofessional conduct as defined by statute or rule;]~~
- 1036 ~~[(19)]~~ (17) having one of the following suspended, revoked, surrendered, or cancelled
- 1037 on the basis of misconduct in a professional capacity that relates to character, honesty,
- 1038 integrity, or truthfulness:
- 1039 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 1040 (b) another license, registration, or certificate to engage in an occupation or profession
- 1041 issued by this state or another jurisdiction;
- 1042 ~~[(20)]~~ (18) failing to respond to a request by the division in an investigation authorized
- 1043 under this chapter within 10 days after the day on which the request is served, including:
- 1044 (a) failing to respond to a subpoena;
- 1045 (b) withholding evidence; or
- 1046 (c) failing to produce documents or records;
- 1047 ~~[(21)]~~ (19) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):
- 1048 (a) providing a title insurance product or service without the approval required by

1049 Section [31A-2-405](#); or
1050 (b) knowingly providing false or misleading information in the statement required by
1051 Subsection [31A-2-405\(2\)](#);
1052 [~~22~~] [\(20\)](#) violating an independent contractor agreement between a principal broker
1053 and a sales agent or associate broker as evidenced by a final judgment of a court;
1054 [~~23~~] [\(21\)](#) (a) engaging in an act of loan modification assistance that requires licensure
1055 as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing
1056 Act, without being licensed under that chapter;
1057 (b) engaging in an act of foreclosure rescue without entering into a written agreement
1058 specifying what one or more acts of foreclosure rescue will be completed;
1059 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an
1060 act of foreclosure rescue by:
1061 (i) suggesting to the person that the licensee has a special relationship with the person's
1062 lender or loan servicer; or
1063 (ii) falsely representing or advertising that the licensee is acting on behalf of:
1064 (A) a government agency;
1065 (B) the person's lender or loan servicer; or
1066 (C) a nonprofit or charitable institution; or
1067 (d) recommending or participating in a foreclosure rescue that requires a person to:
1068 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
1069 has a business relationship or financial interest;
1070 (ii) make a mortgage payment to a person other than the person's loan servicer; or
1071 (iii) refrain from contacting the person's:
1072 (A) lender;
1073 (B) loan servicer;
1074 (C) attorney;
1075 (D) credit counselor; or
1076 (E) housing counselor;
1077 [~~24~~] [\(22\)](#) taking or removing from the premises of a main office or a branch office, or
1078 otherwise limiting a real estate brokerage's access to or control over, a record that:
1079 (a) (i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated

1080 independent contractor prepared; and

1081 (ii) is related to the business of:

1082 (A) the real estate brokerage; or

1083 (B) an associate broker, a branch broker, or a sales agent of the real estate brokerage; or

1084 (b) is related to the business administration of the real estate brokerage;

1085 [~~(25)~~] (23) as a principal broker, placing a lien on real property, unless authorized by

1086 law;

1087 [~~(26)~~] (24) as a sales agent or associate broker, placing a lien on real property for an

1088 unpaid commission or other compensation related to real estate brokerage services; or

1089 [~~(27)~~] (25) failing to timely disclose to a buyer or seller an affiliated business

1090 arrangement, as defined in Section 31A-23a-1001, in accordance with the federal Real Estate

1091 Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.

1092 Section 11. Section 61-2f-402 is amended to read:

1093 **61-2f-402. Investigations.**

1094 (1) The division may conduct a public or private investigation within or outside of this

1095 state as the division considers necessary to determine whether a person has violated, is

1096 violating, or is about to violate this chapter or any rule or order under this chapter.

1097 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms

1098 under this chapter, the division may require or permit a person to file a statement in writing,

1099 under oath or otherwise as to the facts and circumstances concerning the matter to be

1100 investigated.

1101 (3) For the purpose of the investigation described in Subsection (1), the division or an

1102 employee designated by the division may:

1103 (a) administer an oath or affirmation;

1104 (b) issue a subpoena that requires:

1105 (i) the attendance and testimony of a witness; or

1106 (ii) the production of evidence;

1107 (c) take evidence;

1108 (d) require the production of a book, paper, contract, record, other document, or

1109 information relevant to the investigation; and

1110 (e) serve a subpoena by certified mail.

1111 (4) (a) A court of competent jurisdiction shall enforce, according to the practice and
1112 procedure of the court, a subpoena issued by the division.

1113 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee
1114 required by the service statutes of the state where the witness or evidence is located.

1115 (5) (a) If a person is found to have violated this chapter or a rule made under this
1116 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1117 document, or record required under this chapter, including the costs incurred to copy an
1118 electronic book, paper, contract, document, or record in a universally readable format.

1119 (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the
1120 person's license, certification, or registration is automatically suspended:

1121 (i) beginning the day on which the payment of costs is due; and

1122 (ii) ending the day on which the costs are paid.

1123 (6) (a) Except as provided in ~~[Subsection]~~ Subsections (6)(b) and (c), the division shall
1124 commence a disciplinary action under this chapter no later than the earlier of the following:

1125 (i) four years after the day on which the violation is reported to the division; or

1126 (ii) 10 years after the day on which the violation occurred.

1127 (b) Except as provided in Subsection (6)(c), the division shall commence a disciplinary
1128 action within four years after the day on which a violation occurred, if the violation was of:

1129 (i) Section [61-2f-206](#);

1130 (ii) Subsection [61-2f-401](#)(8), which prohibits failure to voluntarily furnish a copy of a
1131 document to the parties before and after the execution of a document; or

1132 (iii) Subsection [61-2f-401](#)(18), which prohibits failure to respond to a division request
1133 in an investigation within 10 days after the day on which the request is served.

1134 ~~[(b)]~~ (c) The division may commence a disciplinary action under this chapter after the
1135 time period described in Subsection (6)(a) or (b) expires if:

1136 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
1137 settlement; and

1138 (B) the division initiates the disciplinary action no later than one year after the day on
1139 which the judgment is issued or the settlement is final; or

1140 (ii) the division and the person subject to a disciplinary action enter into a written
1141 stipulation to extend the time period described in Subsection (6)(a) or (b).

1142 Section 12. Section **61-2g-401** is amended to read:

1143 **61-2g-401. State-certified and state-licensed appraisers -- Restrictions on use of**
1144 **terms -- Conduct prohibited or required -- Trainee.**

1145 (1) (a) The terms "state-certified general appraiser," "state-certified residential
1146 appraiser," and "state-licensed appraiser":

1147 (i) may only be used to refer to an individual who is certified or licensed under this
1148 chapter; and

1149 (ii) may not be used following, or immediately in connection with, the name or
1150 signature of a firm, partnership, corporation, or group, or in any manner that it might be
1151 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the
1152 individual who is certified or licensed under this chapter.

1153 (b) The requirement of this Subsection (1) may not be construed to prevent a
1154 state-certified general appraiser from signing an appraisal report on behalf of a corporation,
1155 partnership, firm, or group practice if it is clear that:

1156 (i) only the individual is certified; and

1157 (ii) the corporation, partnership, firm, or group practice is not certified.

1158 (c) Except as provided in Section [61-2g-103](#), a certificate or license may not be issued
1159 under this chapter to a corporation, partnership, firm, or group.

1160 (2) (a) A person other than a state-certified general appraiser or state-certified
1161 residential appraiser[;] may not assume or use any title, designation, or abbreviation likely to
1162 create the impression of certification in this state as a real estate appraiser.

1163 (b) A person other than a state-licensed appraiser may not assume or use any title,
1164 designation, or abbreviation likely to create the impression of licensure in this state as a real
1165 estate appraiser.

1166 (3) (a) Only an individual who has qualified under the certification requirements of this
1167 chapter is authorized to prepare and sign a certified appraisal report relating to real estate or
1168 real property in this state.

1169 ~~[(b) If a certified appraisal report is prepared and signed by a state-certified residential~~
1170 ~~appraiser, the certified appraisal report shall state, immediately following the signature on the~~
1171 ~~report, "State-Certified Residential Appraiser."]~~

1172 ~~[(c) If a certified appraisal report is prepared and signed by a state-certified general~~

1173 appraiser, the certified appraisal report shall state, immediately following the signature on the
1174 report, "State-Certified General Appraiser."]

1175 [~~(d)~~ An appraisal report prepared by a state-licensed appraiser shall state, immediately
1176 following the signature on the report, "State-Licensed Appraiser."]

1177 [~~(e)~~ When signing a certified appraisal report, a state-certified appraiser shall also place
1178 on the report, immediately below the state-certified appraiser's signature the state-certified
1179 appraiser's certificate number and its expiration date.]

1180 [(f)] (b) A state-certified residential appraiser may not prepare a certified appraisal
1181 report outside the state-certified residential appraiser's authority as defined in Section
1182 [61-2g-312](#).

1183 [(g)] (c) A state-licensed appraiser who assisted in the preparation of a certified
1184 appraisal report is authorized to cosign the certified appraisal report.

1185 (4) A person who has not qualified under this chapter may not describe or refer to any
1186 appraisal or appraisal report relating to real estate or real property in this state by the terms
1187 "certified appraisal" or "certified appraisal report."

1188 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
1189 with the concurrence of the division, the board may make rules for the administration of this
1190 section regarding:

1191 (a) the signing of an appraisal report; or

1192 (b) the disclosure and use of an appraiser or an appraiser trainee's division-assigned
1193 credential, registration, license, or certification number.

1194 [(5)] (6) If a trainee assists a state-certified appraiser in the preparation of an appraisal
1195 report, the appraisal report shall disclose:

1196 (a) the trainee's name; and

1197 (b) the extent to which the trainee assists in the preparation of the appraisal report.

1198 Section 13. Section **61-2g-405** is amended to read:

1199 **61-2g-405. Recordkeeping requirements.**

1200 (1) Subject to Subsection (2), a person licensed or certified under this chapter [~~and a~~
1201 ~~person required to be registered under this chapter before May 3, 2001,~~] shall retain for a
1202 period of five years the original or a true copy of:

1203 (a) each written contract engaging the person's services for real estate or real property

1204 appraisal work;

1205 (b) each appraisal report prepared or signed by the person; and

1206 (c) the supporting data assembled and formulated by the appraiser in preparing each
1207 appraisal report.

1208 (2) The five-year period for retention of records is applicable to each engagement of
1209 the services of the appraiser and begins upon the date of the delivery of each appraisal report to
1210 the client unless, within the five-year period, the appraiser is notified that the appraisal or the
1211 appraisal report is involved in litigation, in which event the records must be maintained for the
1212 longer of:

1213 (a) five years; or

1214 (b) two years following the date of the final disposition of the litigation.

1215 (3) Upon reasonable notice, a person licensed or certified under this chapter [~~and a~~
1216 ~~person required to be registered under this chapter before May 3, 2001,~~] shall make the records
1217 required to be maintained under this chapter available to the division for inspection and
1218 copying.

1219 Section 14. Section **61-2g-502** is amended to read:

1220 **61-2g-502. Disciplinary action -- Grounds.**

1221 (1) (a) The board may order disciplinary action, with the concurrence of the division,
1222 against a person:

1223 (i) registered, licensed, or certified under this chapter; or

1224 (ii) required to be registered, licensed, or certified under this chapter.

1225 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board
1226 action may include:

1227 (i) revoking, suspending, or placing a person's registration, license, or certification on
1228 probation;

1229 (ii) denying a person's original registration, license, or certification;

1230 (iii) denying a person's renewal license, certification, or registration;

1231 (iv) in the case of denial or revocation of a registration, license, or certification, setting
1232 a waiting period for an applicant to apply for a registration, license, or certification under this
1233 chapter;

1234 (v) ordering remedial education;

- 1235 (vi) imposing a civil penalty upon a person not to exceed the greater of:
- 1236 (A) \$5,000 for each violation; or
- 1237 (B) the amount of any gain or economic benefit from a violation;
- 1238 (vii) issuing a cease and desist order;
- 1239 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board,
- 1240 with the concurrence of the division, finds that the person complies with court ordered
- 1241 restitution; or
- 1242 (ix) doing any combination of Subsections (1)(b)(i) through (viii).
- 1243 (c) (i) If the board or division issues an order that orders a fine or educational
- 1244 requirements as part of the disciplinary action against a person, including a stipulation and
- 1245 order, the board or division shall state in the order the deadline by which the person shall
- 1246 comply with the fine or educational requirements.
- 1247 (ii) If a person fails to comply with a stated deadline:
- 1248 (A) the person's license, certificate, or registration is automatically suspended:
- 1249 (I) beginning on the day specified in the order as the deadline for compliance; and
- 1250 (II) ending the day on which the person complies in full with the order; and
- 1251 (B) if the person fails to pay a fine required by an order, the division may begin a
- 1252 collection process:
- 1253 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,
- 1254 Utah Administrative Rulemaking Act; and
- 1255 (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- 1256 (2) The following are grounds for disciplinary action under this section:
- 1257 (a) procuring or attempting to procure a registration, license, or certification under this
- 1258 chapter:
- 1259 (i) by fraud; or
- 1260 (ii) by making a false statement, submitting false information, or making a material
- 1261 misrepresentation in an application filed with the division;
- 1262 (b) paying money or attempting to pay money other than a fee provided for by this
- 1263 chapter to a member or employee of the division to procure a registration, license, or
- 1264 certification under this chapter;
- 1265 (c) an act or omission in the practice of real estate appraising that constitutes

- 1266 dishonesty, fraud, or misrepresentation;
- 1267 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of
- 1268 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
- 1269 ~~[(e) a guilty plea to a criminal offense involving moral turpitude that is held in~~
- 1270 ~~abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo~~
- 1271 ~~contendere, of a criminal offense involving moral turpitude;]~~
- 1272 (e) regardless of whether the crime is related to the appraisal business, to:
- 1273 (i) be convicted of a felony;
- 1274 (ii) be convicted of any of the following involving fraud, misrepresentation, theft, or
- 1275 dishonesty:
- 1276 (A) a class A misdemeanor;
- 1277 (B) a class B misdemeanor; or
- 1278 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1279 (iii) plead guilty or nolo contendere to a felony;
- 1280 (iv) plead guilty or nolo contendere to any of the following involving fraud,
- 1281 misrepresentation, theft, or dishonesty:
- 1282 (A) a class A misdemeanor;
- 1283 (B) a class B misdemeanor; or
- 1284 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1285 (v) enter into a plea in abeyance agreement involving a felony; or
- 1286 (vi) enter into a plea in abeyance agreement involving any of the following involving
- 1287 fraud, misrepresentation, theft, or dishonesty:
- 1288 (A) a class A misdemeanor;
- 1289 (B) a class B misdemeanor; or
- 1290 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1291 (f) engaging in the business of real estate appraising under an assumed or fictitious
- 1292 name not properly registered in this state;
- 1293 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
- 1294 chapter in connection with an appraisal of real estate or real property in this state;
- 1295 (h) making a false or misleading statement in:
- 1296 (i) that portion of a written appraisal report that deals with professional qualifications;

1297 or
1298 (ii) testimony concerning professional qualifications;
1299 (i) violating or disregarding:
1300 (i) this chapter;
1301 (ii) an order of:
1302 (A) the board; or
1303 (B) the division, in a case when the board delegates to the division the authority to
1304 make a decision on behalf of the board; or
1305 (iii) a rule issued under this chapter;
1306 (j) violating the confidential nature of governmental records to which a person
1307 registered, licensed, or certified under this chapter gained access through employment or
1308 engagement as an appraiser by a governmental agency;
1309 (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was
1310 contingent upon:
1311 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;
1312 (ii) the analysis, opinion, conclusion, or valuation reached; or
1313 (iii) the consequences resulting from the appraisal assignment;
1314 (l) unprofessional conduct as defined by statute or rule;
1315 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
1316 (i) providing a title insurance product or service without the approval required by
1317 Section 31A-2-405; or
1318 (ii) knowingly providing false or misleading information in the statement required by
1319 Subsection 31A-2-405(2); or
1320 (n) other conduct that constitutes dishonest dealing.
1321 (3) A person previously licensed, certified, or registered under this chapter remains
1322 responsible for, and is subject to disciplinary action for, an act that the person committed, while
1323 the person was licensed, certified, or registered, in violation of this chapter or an administrative
1324 rule in effect at the time that the person committed the act, regardless of whether the person is
1325 currently licensed, certified, or registered.