

**DIVISION OF REAL ESTATE AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Calvin R. Musselman**

Senate Sponsor: Kirk A. Cullimore

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**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;
- ▶ amends provisions regarding the removal of an appraiser from an appraiser management company's appraiser panel;
- ▶ amends provisions regarding the issuance and display of a license issued under the 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           ~~[(†)]~~ (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; and<sup>[7]</sup>

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.

494 [~~(oo) "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)~~ (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)~~(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.  
515           ~~(pp)~~ "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules made thereunder.  
516           (qq) "Settlement" means the time at which each of the following is complete:  
517           (i) the borrower and, if applicable, the seller sign and deliver to each other or to the  
518 escrow or closing office each document required by:  
519           (A) the real estate purchase contract;  
520           (B) the lender;  
521           (C) the title insurance company;  
522           (D) the escrow or closing office;  
523           (E) the written escrow instructions; or  
524           (F) applicable law;  
525           (ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office  
526 any money, except for the proceeds of any new loan, that the borrower is required to pay; and  
527           (iii) if applicable, the seller delivers to the buyer or to the escrow or closing office any  
528 money that the seller is required to pay.  
529           (rr) "Settlement services" means a service provided in connection with a real estate  
530 settlement, including a title search, a title examination, the provision of a title certificate,  
531 services related to title insurance, services rendered by an attorney, preparing documents, a  
532 property survey, rendering a credit report or appraisal, a pest or fungus inspection, services  
533 rendered by a real estate agent or broker, the origination of a federally related mortgage loan,

534 and the processing of a federally related mortgage.

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

537 (tt) "State" means:

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

539 (ii) the District of Columbia; or

540 (iii) the Commonwealth of Puerto Rico.

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

543 (vv) "Unique identifier" means the same as that term is defined in 12 U.S.C. Sec. 5102.

544 (ww) "Utah-specific" means an educational requirement under this chapter that relates  
545 specifically to Utah.

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

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

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

552 **61-2c-202. Licensure procedures.**

553 (1) To apply for licensure under this chapter an applicant shall in a manner provided by  
554 the division by rule:

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

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

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

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

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

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

- 562 (E) discloses any adverse administrative action taken by an administrative agency  
563 against the entity or a control person for the entity; and
- 564 (F) discloses any history of criminal proceedings that involves a control person of the  
565 entity; and
- 566 (ii) a notarized letter to the division that:
- 567 (A) is on the entity's letterhead;
- 568 (B) is signed by the entity's owner, director, or president;
- 569 (C) authorizes the principal lending manager to do business under the entity's name and  
570 under each of the entity's licensed trade names, if any; and
- 571 (D) includes any information required by the division by rule;
- 572 (b) if the applicant is an individual:
- 573 (i) submit a licensure statement that identifies the entity with which the applicant is  
574 sponsored;
- 575 (ii) authorize periodic criminal background checks through the nationwide database, at  
576 times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah  
577 Administrative Rulemaking Act, accessing[~~:(A) the Utah Bureau of Criminal Identification, if  
578 the nationwide database is able to obtain information from the Utah Bureau of Criminal  
579 Identification, and (B)] the Federal Bureau of Investigation;~~
- 580 (iii) submit evidence using a method approved by the division by rule of having  
581 successfully completed approved prelicensing education in accordance with Section  
582 [61-2c-204.1](#);
- 583 (iv) submit evidence using a method approved by the division by rule of having  
584 successfully passed any required licensing examination in accordance with Section  
585 [61-2c-204.1](#);
- 586 (v) submit evidence using a method approved by the division by rule of having  
587 successfully registered in the nationwide database, including paying a fee required by the  
588 nationwide database; and
- 589 (vi) authorize the division to obtain independent credit reports:

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

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

594 (c) pay to the division:

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

596 and

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

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

601 (i) meets the qualifications for licensure; and

602 (ii) complies with this section.

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

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

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

611 (ii) issue a conditional license:

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

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

616 (3) (a) The commission may delegate to the division the authority to:

617 (i) review a class or category of application for an initial or renewed license;

- 618 (ii) determine whether an applicant meets the qualifications for licensure;  
619 (iii) conduct a necessary hearing on an application; and  
620 (iv) approve or deny a license application without concurrence by the commission.

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

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

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

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

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

635 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

656 (ii) approve~~[-(A)]~~ Utah-specific prelicensing education~~[-or]~~.  
657 ~~[(B) Utah-specific continuing education courses.]~~

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

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

661 (A) before taking the licensing examinations required by Subsection (4);  
662 (B) in the number of hours, not to exceed 90 hours, required by rule made by the  
663 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and  
664 (C) that includes the prelicensing education required by federal licensing regulations;

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

667 (A) in the number of hours required by rule made by the division in accordance with  
668 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and  
669 (B) that includes the continuing education required by federal licensing regulations; or

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

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

674 commission shall determine:

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

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

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

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

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

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

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

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

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

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

698 (i) fundamentals of the English language;

699 (ii) arithmetic;

700 (iii) provisions of this chapter;

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

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

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

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

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

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

715 (ii) upon a finding of reasonable cause.

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

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

721 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

724 (a) ~~[give or receive a referral fee]~~ violate Section 8 of RESPA;

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

726 (i) that is excessive; or

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

728 applicant:

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

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

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

734 (i) safeguard the interests of the public; or  
735 (ii) conform to acceptable standards of the residential mortgage loan industry;

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

738 (i) make a false statement or representation;  
739 (ii) cause false documents to be generated; or  
740 (iii) knowingly permit false information to be submitted by any party;

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

747 (f) violate or not comply with:

748 (i) this chapter;  
749 (ii) an order of the commission or division; or  
750 (iii) a rule made by the division;

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

752 (i) a notice or complaint of the division; or  
753 (ii) a request for information from the division;

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

755 (i) [~~for a residential mortgage loan transaction beginning on or after January 1, 2004,~~]  
756 engage in the business of residential mortgage loans with respect to the transaction if the  
757 person also acts in any of the following capacities with respect to the same residential mortgage

- 758 loan transaction:
- 759 (i) appraiser;
  - 760 (ii) escrow agent;
  - 761 (iii) real estate agent;
  - 762 (iv) general contractor; or
  - 763 (v) title insurance producer;
  - 764 (j) engage in unprofessional conduct as defined by rule;
  - 765 (k) engage in an act or omission in transacting the business of residential mortgage
  - 766 loans that constitutes dishonesty, fraud, or misrepresentation;
  - 767 (l) engage in false or misleading advertising;
  - 768 (m) (i) fail to account for money received in connection with a residential mortgage
  - 769 loan;
  - 770 (ii) use money for a different purpose from the purpose for which the money is
  - 771 received; or
  - 772 (iii) except as provided in Subsection (4), retain money paid for services if the services
  - 773 are not performed;
  - 774 (n) fail to provide a prospective borrower a copy of each appraisal and any other
  - 775 written valuation developed in connection with an application for credit that is to be secured by
  - 776 a first lien on a dwelling in accordance with Subsection (5);
  - 777 (o) engage in an act that is performed to:
  - 778 (i) evade this chapter; or
  - 779 (ii) assist another person to evade this chapter;
  - 780 (p) recommend or encourage default, delinquency, or continuation of an existing
  - 781 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
  - 782 of a residential mortgage loan that will refinance all or part of the indebtedness;
  - 783 (q) in the case of the lending manager of an entity or a branch office of an entity, fail to
  - 784 exercise reasonable supervision over the activities of:
  - 785 (i) unlicensed staff; or

- 786 (ii) a mortgage loan originator who is affiliated with the lending manager;
- 787 (r) pay or offer to pay an individual who does not hold a license under this chapter for
- 788 work that requires the individual to hold a license under this chapter;
- 789 (s) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 790 (i) provide a title insurance product or service without the approval required by Section
- 791 31A-2-405; or
- 792 (ii) knowingly provide false or misleading information in the statement required by
- 793 Subsection 31A-2-405(2);
- 794 (t) represent to the public that the person can or will perform any act of a mortgage
- 795 loan originator if that person is not licensed under this chapter because the person is exempt
- 796 under Subsection 61-2c-105(4), including through:
- 797 (i) advertising;
- 798 (ii) a business card;
- 799 (iii) stationery;
- 800 (iv) a brochure;
- 801 (v) a sign;
- 802 (vi) a rate list; or
- 803 (vii) other promotional item;
- 804 (u) (i) engage in an act of loan modification assistance without being licensed under
- 805 this chapter;
- 806 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
- 807 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under
- 808 that chapter;
- 809 (iii) engage in an act of loan modification assistance without entering into a written
- 810 agreement specifying which one or more acts of loan modification assistance will be
- 811 completed;
- 812 (iv) request or require a person to pay a fee before obtaining:
- 813 (A) a written offer for a loan modification from the person's lender or servicer; and

814 (B) the person's written acceptance of the offer from the lender or servicer;  
815 (v) induce a person seeking a loan modification to hire the licensee to engage in an act  
816 of loan modification assistance by:  
817 (A) suggesting to the person that the licensee has a special relationship with the  
818 person's lender or loan servicer; or  
819 (B) falsely representing or advertising that the licensee is acting on behalf of:  
820 (I) a government agency;  
821 (II) the person's lender or loan servicer; or  
822 (III) a nonprofit or charitable institution;  
823 (vi) recommend or participate in a loan modification that requires a person to:  
824 (A) transfer title to real property to the licensee or to a third-party with whom the  
825 licensee has a business relationship or financial interest;  
826 (B) make a mortgage payment to a person other than the person's loan servicer; or  
827 (C) refrain from contacting the person's:  
828 (I) lender;  
829 (II) loan servicer;  
830 (III) attorney;  
831 (IV) credit counselor; or  
832 (V) housing counselor; or  
833 (vii) for an agreement for loan modification assistance entered into on or after May 11,  
834 2010, engage in an act of loan modification assistance without offering in writing to the person  
835 entering into the agreement for loan modification assistance a right to cancel the agreement  
836 within three business days after the day on which the person enters the agreement;  
837 (v) sign or initial a document on behalf of another person, except for in a circumstance  
838 allowed by the division by rule, with the concurrence of the commission, made in accordance  
839 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;  
840 (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse  
841 Mortgage Act; or

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

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

845 (ii) the Federal National Mortgage Association.

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

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

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

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

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

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

857 (a) be convicted of:

858 (i) a felony; or

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

860 (A) a class A misdemeanor;

861 (B) a class B misdemeanor; or

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

863 (b) plead guilty or nolo contendere to:

864 (i) a felony; or

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

866 (A) a class A misdemeanor;

867 (B) a class B misdemeanor; or

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

869 (c) enter into a plea in abeyance agreement in relation to:

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

898 each appraisal and any other written valuation:

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

900 (ii) at the settlement.

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

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

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

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

914 **61-2e-306. Removal of appraiser from appraisal panel.**

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

920 (a) notifying the appraiser in writing of:

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

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

925 (A) illegal conduct; or

926 (B) a violation of the applicable appraisal standards; and

927 (b) providing an opportunity for the appraiser to respond to the notification under  
928 Subsection (1)(a).

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

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

933 **61-2f-205. Form of license.**

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

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

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

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

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

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

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

944 **61-2f-401. Grounds for disciplinary action.**

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

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

948 (b) making an intentional misrepresentation;

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

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

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

- 954           (2) acting for more than one party in a transaction without the informed consent of the  
955 parties;
- 956           (3) (a) acting as an associate broker or sales agent while not affiliated with a principal  
957 broker;
- 958           (b) representing or attempting to represent a principal broker other than the principal  
959 broker with whom the person is affiliated; or
- 960           (c) representing as sales agent or having a contractual relationship similar to that of  
961 sales agent with a person other than a principal broker;
- 962           (4) (a) failing, within a reasonable time, to account for or to remit money that belongs  
963 to another and comes into the person's possession;
- 964           (b) commingling money described in Subsection (4)(a) with the person's own money;  
965 or
- 966           (c) diverting money described in Subsection (4)(a) from the purpose for which the  
967 money is received;
- 968           (5) paying or offering to pay valuable consideration~~[, as defined by the commission,]~~ to  
969 a person not licensed under this chapter, except that valuable consideration may be shared:
- 970           (a) with a principal broker of another jurisdiction; or
- 971           (b) as provided under:
- 972           (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- 973           (ii) Title 16, Chapter 11, Professional Corporation Act; or
- 974           (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as  
975 appropriate pursuant to Section [48-3a-1405](#);
- 976           (6) for a principal broker, paying or offering to pay a sales agent or associate broker  
977 who is not affiliated with the principal broker at the time the sales agent or associate broker  
978 earned the compensation;
- 979           (7) being incompetent to act as a principal broker, associate broker, or sales agent in  
980 such manner as to safeguard the interests of the public;
- 981           (8) failing to voluntarily furnish a copy of a document to the parties before and after the

982 execution of a document;

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

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

986 (b) the identification of real estate;

987 (c) the sale or rental price;

988 (d) money received in trust;

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

990 (f) any other information required by rule;

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

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

995 ~~[(a) the criminal offense is related to real estate; or]~~

996 ~~[(b) the conviction is based upon a plea of nolo contendere;]~~

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

999 ~~[(a) a plea in abeyance agreement;]~~

1000 ~~[(b) a diversion agreement;]~~

1001 ~~[(c) a withheld judgment; or]~~

1002 ~~[(d) an agreement in which a charge was held in suspense during a period of time when  
1003 the licensee was on probation or was obligated to comply with conditions outlined by a court;]~~

1004 (11) regardless of whether the crime is related to the business of real estate:

1005 (a) be convicted of:

1006 (i) a felony; or

1007 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:

1008 (A) a class A misdemeanor;

1009 (B) a class B misdemeanor; or

- 1010 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1011 (b) plead guilty or nolo contendere to:
- 1012 (i) a felony; or
- 1013 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 1014 (A) a class A misdemeanor;
- 1015 (B) a class B misdemeanor; or
- 1016 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1017 (c) enter into a plea in abeyance agreement in relation to:
- 1018 (i) a felony; or
- 1019 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 1020 (A) a class A misdemeanor;
- 1021 (B) a class B misdemeanor; or
- 1022 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1023 ~~[(13)]~~ (12) advertising the availability of real estate or the services of a licensee in a
- 1024 false, misleading, or deceptive manner;
- 1025 ~~[(14)]~~ (13) in the case of a principal broker or a branch broker, failing to exercise
- 1026 active and reasonable supervision, as the commission may define by rule made in accordance
- 1027 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the
- 1028 principal broker's or branch broker's licensed or unlicensed staff;
- 1029 ~~[(15)]~~ (14) violating or disregarding:
- 1030 (a) this chapter;
- 1031 (b) an order of the commission; or
- 1032 (c) the rules adopted by the commission and the division;
- 1033 ~~[(16)]~~ (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a
- 1034 real estate transaction;
- 1035 ~~[(17)]~~ (16) any other conduct which constitutes dishonest dealing;
- 1036 ~~[(18) unprofessional conduct as defined by statute or rule;]~~
- 1037 ~~[(19)]~~ (17) having one of the following suspended, revoked, surrendered, or cancelled

1038 on the basis of misconduct in a professional capacity that relates to character, honesty,  
1039 integrity, or truthfulness:

- 1040 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 1041 (b) another license, registration, or certificate to engage in an occupation or profession  
1042 issued by this state or another jurisdiction;

1043 [~~20~~] (18) failing to respond to a request by the division in an investigation authorized  
1044 under this chapter within 10 days after the day on which the request is served, including:

- 1045 (a) failing to respond to a subpoena;
- 1046 (b) withholding evidence; or
- 1047 (c) failing to produce documents or records;

1048 [~~21~~] (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

- 1049 (a) providing a title insurance product or service without the approval required by  
1050 Section 31A-2-405; or
- 1051 (b) knowingly providing false or misleading information in the statement required by  
1052 Subsection 31A-2-405(2);

1053 [~~22~~] (20) violating an independent contractor agreement between a principal broker  
1054 and a sales agent or associate broker as evidenced by a final judgment of a court;

1055 [~~23~~] (21) (a) engaging in an act of loan modification assistance that requires licensure  
1056 as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing  
1057 Act, without being licensed under that chapter;

- 1058 (b) engaging in an act of foreclosure rescue without entering into a written agreement  
1059 specifying what one or more acts of foreclosure rescue will be completed;
- 1060 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an  
1061 act of foreclosure rescue by:
  - 1062 (i) suggesting to the person that the licensee has a special relationship with the person's  
1063 lender or loan servicer; or
  - 1064 (ii) falsely representing or advertising that the licensee is acting on behalf of:
    - 1065 (A) a government agency;

1066 (B) the person's lender or loan servicer; or  
1067 (C) a nonprofit or charitable institution; or  
1068 (d) recommending or participating in a foreclosure rescue that requires a person to:  
1069 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee  
1070 has a business relationship or financial interest;  
1071 (ii) make a mortgage payment to a person other than the person's loan servicer; or  
1072 (iii) refrain from contacting the person's:  
1073 (A) lender;  
1074 (B) loan servicer;  
1075 (C) attorney;  
1076 (D) credit counselor; or  
1077 (E) housing counselor;  
1078 [~~24~~] (22) taking or removing from the premises of a main office or a branch office, or  
1079 otherwise limiting a real estate brokerage's access to or control over, a record that:  
1080 (a) (i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated  
1081 independent contractor prepared; and  
1082 (ii) is related to the business of:  
1083 (A) the real estate brokerage; or  
1084 (B) an associate broker, a branch broker, or a sales agent of the real estate brokerage; or  
1085 (b) is related to the business administration of the real estate brokerage;  
1086 [~~25~~] (23) as a principal broker, placing a lien on real property, unless authorized by  
1087 law;  
1088 [~~26~~] (24) as a sales agent or associate broker, placing a lien on real property for an  
1089 unpaid commission or other compensation related to real estate brokerage services; or  
1090 [~~27~~] (25) failing to timely disclose to a buyer or seller an affiliated business  
1091 arrangement, as defined in Section 31A-23a-1001, in accordance with the federal Real Estate  
1092 Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.  
1093 Section 11. Section **61-2f-402** is amended to read:

1094           **61-2f-402. Investigations -- Disciplinary actions.**

1095           (1) The division may conduct a public or private investigation within or outside of this  
1096 state as the division considers necessary to determine whether a person has violated, is  
1097 violating, or is about to violate this chapter or any rule or order under this chapter.

1098           (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms  
1099 under this chapter, the division may require or permit a person to file a statement in writing,  
1100 under oath or otherwise as to the facts and circumstances concerning the matter to be  
1101 investigated.

1102           (3) For the purpose of the investigation described in Subsection (1), the division or an  
1103 employee designated by the division may:

1104           (a) administer an oath or affirmation;

1105           (b) issue a subpoena that requires:

1106           (i) the attendance and testimony of a witness; or

1107           (ii) the production of evidence;

1108           (c) take evidence;

1109           (d) require the production of a book, paper, contract, record, other document, or  
1110 information relevant to the investigation; and

1111           (e) serve a subpoena by certified mail.

1112           (4) (a) A court of competent jurisdiction shall enforce, according to the practice and  
1113 procedure of the court, a subpoena issued by the division.

1114           (b) The division shall pay any witness fee, travel expense, mileage, or any other fee  
1115 required by the service statutes of the state where the witness or evidence is located.

1116           (5) (a) If a person is found to have violated this chapter or a rule made under this  
1117 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,  
1118 document, or record required under this chapter, including the costs incurred to copy an  
1119 electronic book, paper, contract, document, or record in a universally readable format.

1120           (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the  
1121 person's license, certification, or registration is automatically suspended:

1122 (i) beginning the day on which the payment of costs is due; and  
1123 (ii) ending the day on which the costs are paid.

1124 (6) (a) Except as provided in ~~Subsection~~ Subsections (6)(b) and (c), the division shall  
1125 commence a disciplinary action under this chapter no later than the earlier of the following:

1126 (i) four years after the day on which the violation is reported to the division; or  
1127 (ii) 10 years after the day on which the violation occurred.

1128 (b) Except as provided in Subsection (6)(c), the division shall commence a disciplinary  
1129 action within four years after the day on which a violation occurred, if the violation was of:

1130 (i) Section 61-2f-206;  
1131 (ii) Subsection 61-2f-401(8), which prohibits failure to voluntarily furnish a copy of a  
1132 document to the parties before and after the execution of a document; or  
1133 (iii) Subsection 61-2f-401(18), which prohibits failure to respond to a division request  
1134 in an investigation within 10 days after the day on which the request is served.

1135 ~~(b)~~ (c) The division may commence a disciplinary action under this chapter after the  
1136 time period described in Subsection (6)(a) or (b) expires if:

1137 (i) (A) the disciplinary action is in response to a civil or criminal judgment or  
1138 settlement; and

1139 (B) the division initiates the disciplinary action no later than one year after the day on  
1140 which the judgment is issued or the settlement is final; or

1141 (ii) the division and the person subject to a disciplinary action enter into a written  
1142 stipulation to extend the time period described in Subsection (6)(a) or (b).

1143 Section 12. Section **61-2g-401** is amended to read:

1144 **61-2g-401. State-certified and state-licensed appraisers -- Restrictions on use of**  
1145 **terms -- Conduct prohibited or required -- Trainee.**

1146 (1) (a) The terms "state-certified general appraiser," "state-certified residential  
1147 appraiser," and "state-licensed appraiser":

1148 (i) may only be used to refer to an individual who is certified or licensed under this  
1149 chapter; and

1150 (ii) may not be used following, or immediately in connection with, the name or  
1151 signature of a firm, partnership, corporation, or group, or in any manner that it might be  
1152 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the  
1153 individual who is certified or licensed under this chapter.

1154 (b) The requirement of this Subsection (1) may not be construed to prevent a  
1155 state-certified general appraiser from signing an appraisal report on behalf of a corporation,  
1156 partnership, firm, or group practice if it is clear that:

1157 (i) only the individual is certified; and

1158 (ii) the corporation, partnership, firm, or group practice is not certified.

1159 (c) Except as provided in Section 61-2g-103, a certificate or license may not be issued  
1160 under this chapter to a corporation, partnership, firm, or group.

1161 (2) (a) A person other than a state-certified general appraiser or state-certified  
1162 residential appraiser[;] may not assume or use any title, designation, or abbreviation likely to  
1163 create the impression of certification in this state as a real estate appraiser.

1164 (b) A person other than a state-licensed appraiser may not assume or use any title,  
1165 designation, or abbreviation likely to create the impression of licensure in this state as a real  
1166 estate appraiser.

1167 (3) (a) Only an individual who has qualified under the certification requirements of this  
1168 chapter is authorized to prepare and sign a certified appraisal report relating to real estate or  
1169 real property in this state.

1170 ~~[(b) If a certified appraisal report is prepared and signed by a state-certified residential~~  
1171 ~~appraiser, the certified appraisal report shall state, immediately following the signature on the~~  
1172 ~~report, "State-Certified Residential Appraiser."]~~

1173 ~~[(c) If a certified appraisal report is prepared and signed by a state-certified general~~  
1174 ~~appraiser, the certified appraisal report shall state, immediately following the signature on the~~  
1175 ~~report, "State-Certified General Appraiser."]~~

1176 ~~[(d) An appraisal report prepared by a state-licensed appraiser shall state, immediately~~  
1177 ~~following the signature on the report, "State-Licensed Appraiser."]~~

1178 ~~[(e) When signing a certified appraisal report, a state-certified appraiser shall also place~~  
1179 ~~on the report, immediately below the state-certified appraiser's signature the state-certified~~  
1180 ~~appraiser's certificate number and its expiration date.]~~

1181 ~~[(f)]~~ (b) A state-certified residential appraiser may not prepare a certified appraisal  
1182 report outside the state-certified residential appraiser's authority as defined in Section  
1183 **61-2g-312**.

1184 ~~[(g)]~~ (c) A state-licensed appraiser who assisted in the preparation of a certified  
1185 appraisal report is authorized to cosign the certified appraisal report.

1186 (4) A person who has not qualified under this chapter may not describe or refer to any  
1187 appraisal or appraisal report relating to real estate or real property in this state by the terms  
1188 "certified appraisal" or "certified appraisal report."

1189 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
1190 with the concurrence of the division, the board may make rules for the administration of this  
1191 section regarding:

1192 (a) the signing of an appraisal report; or

1193 (b) the disclosure and use of an appraiser or an appraiser trainee's division-assigned  
1194 credential, registration, license, or certification number.

1195 ~~[(5)]~~ (6) If a trainee assists a state-certified appraiser in the preparation of an appraisal  
1196 report, the appraisal report shall disclose:

1197 (a) the trainee's name; and

1198 (b) the extent to which the trainee assists in the preparation of the appraisal report.

1199 Section 13. Section **61-2g-405** is amended to read:

1200 **61-2g-405. Recordkeeping requirements.**

1201 (1) Subject to Subsection (2), a person licensed or certified under this chapter ~~[and a~~  
1202 ~~person required to be registered under this chapter before May 3, 2001,]~~ shall retain for a  
1203 period of five years the original or a true copy of:

1204 (a) each written contract engaging the person's services for real estate or real property  
1205 appraisal work;

1206 (b) each appraisal report prepared or signed by the person; and

1207 (c) the supporting data assembled and formulated by the appraiser in preparing each  
1208 appraisal report.

1209 (2) The five-year period for retention of records is applicable to each engagement of  
1210 the services of the appraiser and begins upon the date of the delivery of each appraisal report to  
1211 the client unless, within the five-year period, the appraiser is notified that the appraisal or the  
1212 appraisal report is involved in litigation, in which event the records must be maintained for the  
1213 longer of:

1214 (a) five years; or

1215 (b) two years following the date of the final disposition of the litigation.

1216 (3) Upon reasonable notice, a person licensed or certified under this chapter [~~and a~~  
1217 ~~person required to be registered under this chapter before May 3, 2001,~~] shall make the records  
1218 required to be maintained under this chapter available to the division for inspection and  
1219 copying.

1220 Section 14. Section **61-2g-502** is amended to read:

1221 **61-2g-502. Disciplinary action -- Grounds.**

1222 (1) (a) The board may order disciplinary action, with the concurrence of the division,  
1223 against a person:

1224 (i) registered, licensed, or certified under this chapter; or

1225 (ii) required to be registered, licensed, or certified under this chapter.

1226 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board  
1227 action may include:

1228 (i) revoking, suspending, or placing a person's registration, license, or certification on  
1229 probation;

1230 (ii) denying a person's original registration, license, or certification;

1231 (iii) denying a person's renewal license, certification, or registration;

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

1234 chapter;

1235 (v) ordering remedial education;

1236 (vi) imposing a civil penalty upon a person not to exceed the greater of:

1237 (A) \$5,000 for each violation; or

1238 (B) the amount of any gain or economic benefit from a violation;

1239 (vii) issuing a cease and desist order;

1240 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board,

1241 with the concurrence of the division, finds that the person complies with court ordered

1242 restitution; or

1243 (ix) doing any combination of Subsections (1)(b)(i) through (viii).

1244 (c) (i) If the board or division issues an order that orders a fine or educational

1245 requirements as part of the disciplinary action against a person, including a stipulation and

1246 order, the board or division shall state in the order the deadline by which the person shall

1247 comply with the fine or educational requirements.

1248 (ii) If a person fails to comply with a stated deadline:

1249 (A) the person's license, certificate, or registration is automatically suspended:

1250 (I) beginning on the day specified in the order as the deadline for compliance; and

1251 (II) ending the day on which the person complies in full with the order; and

1252 (B) if the person fails to pay a fine required by an order, the division may begin a

1253 collection process:

1254 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,

1255 Utah Administrative Rulemaking Act; and

1256 (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

1257 (2) The following are grounds for disciplinary action under this section:

1258 (a) procuring or attempting to procure a registration, license, or certification under this

1259 chapter:

1260 (i) by fraud; or

1261 (ii) by making a false statement, submitting false information, or making a material

1262 misrepresentation in an application filed with the division;

1263 (b) paying money or attempting to pay money other than a fee provided for by this  
1264 chapter to a member or employee of the division to procure a registration, license, or  
1265 certification under this chapter;

1266 (c) an act or omission in the practice of real estate appraising that constitutes  
1267 dishonesty, fraud, or misrepresentation;

1268 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of  
1269 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

1270 ~~[(e) a guilty plea to a criminal offense involving moral turpitude that is held in  
1271 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo  
1272 contendere, of a criminal offense involving moral turpitude;]~~

1273 (e) regardless of whether the crime is related to the appraisal business, to:

1274 (i) be convicted of a felony;

1275 (ii) be convicted of any of the following involving fraud, misrepresentation, theft, or  
1276 dishonesty:

1277 (A) a class A misdemeanor;

1278 (B) a class B misdemeanor; or

1279 (C) a criminal offense comparable to a class A or class B misdemeanor;

1280 (iii) plead guilty or nolo contendere to a felony;

1281 (iv) plead guilty or nolo contendere to any of the following involving fraud,  
1282 misrepresentation, theft, or dishonesty:

1283 (A) a class A misdemeanor;

1284 (B) a class B misdemeanor; or

1285 (C) a criminal offense comparable to a class A or class B misdemeanor;

1286 (v) enter into a plea in abeyance agreement involving a felony; or

1287 (vi) enter into a plea in abeyance agreement involving any of the following involving  
1288 fraud, misrepresentation, theft, or dishonesty:

1289 (A) a class A misdemeanor;

- 1290            (B) a class B misdemeanor; or
- 1291            (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1292            (f) engaging in the business of real estate appraising under an assumed or fictitious
- 1293 name not properly registered in this state;
- 1294            (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
- 1295 chapter in connection with an appraisal of real estate or real property in this state;
- 1296            (h) making a false or misleading statement in:
- 1297            (i) that portion of a written appraisal report that deals with professional qualifications;
- 1298 or
- 1299            (ii) testimony concerning professional qualifications;
- 1300            (i) violating or disregarding:
- 1301            (i) this chapter;
- 1302            (ii) an order of:
- 1303            (A) the board; or
- 1304            (B) the division, in a case when the board delegates to the division the authority to
- 1305 make a decision on behalf of the board; or
- 1306            (iii) a rule issued under this chapter;
- 1307            (j) violating the confidential nature of governmental records to which a person
- 1308 registered, licensed, or certified under this chapter gained access through employment or
- 1309 engagement as an appraiser by a governmental agency;
- 1310            (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was
- 1311 contingent upon:
- 1312            (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;
- 1313            (ii) the analysis, opinion, conclusion, or valuation reached; or
- 1314            (iii) the consequences resulting from the appraisal assignment;
- 1315            (l) unprofessional conduct as defined by statute or rule;
- 1316            (m) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):
- 1317            (i) providing a title insurance product or service without the approval required by

1318 Section 31A-2-405; or  
1319           (ii) knowingly providing false or misleading information in the statement required by  
1320 Subsection 31A-2-405(2); or  
1321           (n) other conduct that constitutes dishonest dealing.  
1322           (3) A person previously licensed, certified, or registered under this chapter remains  
1323 responsible for, and is subject to disciplinary action for, an act that the person committed, while  
1324 the person was licensed, certified, or registered, in violation of this chapter or an administrative  
1325 rule in effect at the time that the person committed the act, regardless of whether the person is  
1326 currently licensed, certified, or registered.