

## HB0147S01 compared with HB0147

~~{deleted text}~~ shows text that was in HB0147 but was deleted in HB0147S01.

inserted text shows text that was not in HB0147 but was inserted into HB0147S01.

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Representative Calvin R. Musselman proposes the following substitute bill:

### DIVISION OF REAL ESTATE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Calvin R. Musselman**

Senate Sponsor: ~~{~~ Kirk A. Cullimore

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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;

~~{~~ ~~→ makes a person subject to an occupational or professional regulation of Title 61, Securities Division - Real Estate Division strictly liable for each violation under the title;~~

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- ‡ ▶ 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;
- ▶ amends the amount of time following certain violations in which the Division of Real Estate may commence a disciplinary action;
- ▶ amends provision related to an appraiser trainee signing an appraisal report; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

57-11-4, as last amended by Laws of Utah 2013, Chapter 292

57-11-6, as last amended by Laws of Utah 1990, Chapter 199

57-11-10, as last amended by Laws of Utah 2008, Chapter 382

~~{ 61-2-203, as last amended by Laws of Utah 2019, Chapter 337~~

‡ 61-2c-102, as last amended by Laws of Utah 2018, Chapter 55

61-2c-202, as last amended by Laws of Utah 2015, Chapter 262

61-2c-204.1, as last amended by Laws of Utah 2017, Chapter 182

61-2c-301, as last amended by Laws of Utah 2017, Chapter 182

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**61-2e-306**, as last amended by Laws of Utah 2016, Chapter 384

**61-2f-205**, as last amended by Laws of Utah 2014, Chapter 350

**61-2f-401**, as last amended by Laws of Utah 2019, Chapters 337 and 475

**61-2f-402**, as last amended by Laws of Utah 2017, Chapter 182

**61-2g-401**, as renumbered and amended by Laws of Utah 2011, Chapter 289

**61-2g-405**, as renumbered and amended by Laws of Utah 2011, Chapter 289

**61-2g-502**, as last amended by Laws of Utah 2016, Chapter 384

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

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

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

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

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

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

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

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

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

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

(d) pursuant to court order;

(e) by a government or government agency;

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

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

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

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

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

(g) in an industrial park;

(h) as cemetery lots; or

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

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

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

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

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

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

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

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

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

(ii) the culinary water service is provided by a water corporation as defined in Section

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54-2-1.

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

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

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

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

(B) evidence that the entity providing water service is exempt from the jurisdiction of the Public Service Commission.

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

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

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

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

(ii) a filing fee of \$100.

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

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

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

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

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

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

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

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

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

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

(a) an irrevocable appointment of the division to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or ~~[his]~~ the applicant's personal representative;

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

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

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

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

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

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

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

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

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

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

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the application is filed;

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

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

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

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

(ii) if the subdivided lands are situated in another jurisdiction, shall be in the form of an opinion of an attorney:

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

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

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

~~(g)~~ (i) copies of the instruments ~~[which]~~ that will be delivered to a purchaser to evidence ~~[his]~~ the purchaser's interest in the subdivided lands and of the contracts and other agreements ~~[which]~~ that a purchaser will be required to agree to or sign;

~~(h)~~ (j) copies of the instruments by which the interest in the subdivided lands to be disposed of to the purchaser was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with recording data, but if any of these instruments contain any information relating to the consideration paid upon the prior acquisition of the subdivided lands, this information may be blocked out;

~~(i)~~ (k) if there is a lien or encumbrance affecting more than one unit, a statement of the consequences to a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

~~(j)~~ (l) copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;

~~(k)~~ (m) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and of any existing or proposed taxes or special assessments which affect the subdivided lands;

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

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disposed of are included on a subdivision plat map [~~which has been~~] that is filed and approved [~~pursuant to~~] in accordance with Title 17, Counties, an opinion by an attorney, licensed to practice in this state and who is not a salaried employee, officer, or director of the applicant or owner, stating that:

(A) the proposed or made land division [~~proposed or made~~] does not [~~or will not~~] violate any existing state statute or local ordinance; and

(B) all permits or approvals have been obtained from the applicable state or local authorities necessary for the subdivided lands to be put to the use for which they are offered, except for those permits or approvals [~~which~~] that will not be granted until the subdivided lands are registered under this chapter if this registration is the only condition precedent to the granting of the permits or approvals; or

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

~~(m)~~ (o) a statement of:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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subdivided lands.

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

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

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

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

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

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

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

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

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

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

Section 4. Section ~~{61-2-203}~~ 61-2c-102 is amended to read:

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

~~—————~~ (1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures

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Act, in an adjudicative proceeding under a chapter the division administers:

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

—— (a) a notice of agency action; or

—— (b) a notice of formal or informal proceeding.

—— (3) If the division initiates an adjudicative proceeding in accordance with this title against a person subject to the occupational or professional regulations of this title, the person is strictly liable for each violation, unless statute or rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, states otherwise.

—— [(3)] (4) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not apply to the issuance of a citation under Subsection [(4)] (5), unless a licensee or another person authorized by law to contest the validity or correctness of a citation commences an adjudicative proceeding contesting the citation.

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

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

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

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

—— (d) Subsection 61-2c-205(4), which requires notification of a specified legal action;

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

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

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

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

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

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

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- ~~—— (k) Subsection 61-2e-201(1), which requires registration;~~
- ~~—— (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;~~
- ~~—— (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;~~
- ~~—— (n) Subsection 61-2e-401(1)(c), which prohibits failure to respond to a division request;~~
- ~~—— (o) Subsection 61-2f-201(1), which requires licensure;~~
- ~~—— (p) Subsection 61-2f-206(1), which requires entity registration;~~
- ~~—— (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;~~
- ~~—— (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;~~
- ~~—— (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated with a principal broker;~~
- ~~—— (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records and prohibits failing to make the specified records available for division inspection;~~
- ~~—— (u) Subsection 61-2f-401[(13)](12), which prohibits false, misleading, or deceptive advertising;~~
- ~~—— (v) Subsection 61-2f-401[(20)](18), which prohibits failing to respond to a division request;~~
- ~~—— (w) Subsection 61-2g-301(1), which requires licensure;~~
- ~~—— (x) Subsection 61-2g-405(3), which requires making records required to be maintained available to the division;~~
- ~~—— (y) Subsection 61-2g-501(2)(c), which requires a person to respond to a division request in an investigation within 10 days after the day on which the request is served;~~
- ~~—— (z) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;~~
- ~~—— (aa) a rule made pursuant to any Subsection listed in this Subsection [(4)] (5);~~
- ~~—— (bb) an order of the division; or~~
- ~~} { (cc) an order of the commission or board that oversees the person's profession.~~
- ~~—— [(5)] (6) (a) In accordance with Subsection [(10)] (11), the division may assess a fine against a person for a violation of a provision listed in Subsection [(4)] (5), as evidenced by:~~
  - ~~—— (i) an uncontested citation;~~
  - ~~—— (ii) a stipulated settlement; or~~
  - ~~—— (iii) a finding of a violation in an adjudicative proceeding.~~

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~~\_\_\_\_\_ (b) The division may, in addition to or in lieu of a fine under Subsection [(5)] (6)(a), order the person to cease and desist from an activity that violates a provision listed in Subsection [(4)] (5):~~

~~\_\_\_\_\_ [(6)] (7) Except as provided in Subsection [(8)] (9)(d), the division may not use a citation to effect a license:~~

~~\_\_\_\_\_ (a) denial;~~

~~\_\_\_\_\_ (b) probation;~~

~~\_\_\_\_\_ (c) suspension; or~~

~~\_\_\_\_\_ (d) revocation.~~

~~\_\_\_\_\_ [(7)] (8) (a) A citation issued by the division shall:~~

~~\_\_\_\_\_ (i) be in writing;~~

~~\_\_\_\_\_ (ii) describe with particularity the nature of the violation, including a reference to the provision of the statute, rule, or order alleged to have been violated;~~

~~\_\_\_\_\_ (iii) clearly state that the recipient must notify the division in writing within 20 calendar days after the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and~~

~~\_\_\_\_\_ (iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time period specified in the citation.~~

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

~~\_\_\_\_\_ [(8)] (9) (a) A citation becomes final:~~

~~\_\_\_\_\_ (i) if within 20 calendar days after the day on which the citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation; or~~

~~\_\_\_\_\_ (ii) if the director or the director's designee conducts a hearing pursuant to a timely request for a hearing and issues an order finding that a violation has occurred:~~

~~\_\_\_\_\_ (b) The division may extend, for cause, the 20-day period described in Subsection (9)(a) to contest a citation.~~

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

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

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

~~—— [(9)] (10) (a) The division may not issue a citation under this section after the expiration of one year after the day on which the violation occurs.~~

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

~~—— [(10)] (11) The director or the director's designee shall assess a fine with a citation in an amount that is no more than:~~

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

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

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

~~—— [(11)] (12) (a) An action for a first or second offense for which the division has not issued a final order does not preclude the division from initiating a subsequent action for a second or subsequent offense while the preceding action is pending.~~

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

~~—— [(12)] (13) (a) If a person does not pay a penalty, the director may collect the unpaid penalty by:~~

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

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

~~—— (A) where the person resides; or~~

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

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

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

~~—— Section 5. Section 61-2c-102 is amended to read:~~

‡ **61-2c-102. Definitions.**

(1) As used in this chapter:

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

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

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

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

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

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

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

(i) results in a greater reduction in the principle of the mortgage than a regular installment payment; and

(ii) is made during or at the end of the term of the loan.

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

(i) licensed as a lending manager; and

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

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

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

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

(iii) that operates under:

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

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

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

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

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

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- (A) engage in an act that makes an individual a mortgage loan originator;
- (B) make or originate a residential mortgage loan;
- (C) directly or indirectly solicit a residential mortgage loan for another;
- (D) unless exempt under Section 61-2c-105 or excluded under Subsection (1)(i)(ii),

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

- (I) preparing a loan package;
- (II) communicating with the borrower or lender;
- (III) advising on a loan term;
- (IV) receiving, collecting, or distributing information common for the processing or

underwriting of a loan in the mortgage industry; or

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

(E) engage in loan modification assistance.

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

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

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

- (I) a loan wholesaler;
- (II) an account executive for a loan wholesaler;
- (III) a loan closer; or
- (IV) funding a loan; or

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

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

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

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

- (i) with a fixed amount borrowed; and
- (ii) that does not permit additional borrowing secured by the same collateral.

(l) "Commission" means the Residential Mortgage Regulatory Commission created in



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Section 61-2c-104.

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

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

- (i) services;
- (ii) personal or real property; or
- (iii) another thing of value.

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

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

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

(i) direct or exercise a controlling interest over:

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

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

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

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

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

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

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

(E) an individual who performs a function similar to an individual listed in this Subsection (1)(r)(ii).

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

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

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

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

(i) a condominium unit;

(ii) a cooperative unit;

(iii) a manufactured home; or

(iv) a house.

(w) "Employee":

(i) means an individual:

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

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

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

(x) "Entity" means:

(i) a corporation;

(ii) a limited liability company;

(iii) a partnership;

(iv) a company;

(v) an association;

(vi) a joint venture;

(vii) a business trust;

(viii) a trust; or

(ix) another organization.

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

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

(aa) "Foreclosure rescue" means, for compensation or with the expectation of receiving

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valuable consideration, to:

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

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

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

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

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

(1)(aa)(i); or

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

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

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

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

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

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

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

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

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

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

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

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

(V) an addition of collateral;

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

(VII) an addition of a cosigner; or

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

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

loan; or

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

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

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

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

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

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

(Aa) a purchase;

(Bb) a refinance;

(Cc) a loan modification assistance; or

(Dd) a foreclosure rescue; or

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

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

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

(A) is described in Subsection (1)(gg)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(i)(ii)(A);

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

(II) performs only real estate brokerage activities; and

(III) receives no compensation from:

(Aa) a lender;

(Bb) a lending manager; or

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

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

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

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

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

(kk) "Prelicensing education" means education taken by an individual seeking to be

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licensed under this chapter in order to meet the education requirements imposed by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

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

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

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

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

(nn) "Record" means information that is:

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

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

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

(II) in a perceivable and reproducible form.

(oo) "Referral fee":

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

(ii) does not include:

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

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

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

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

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest; and

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

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(1)(pp)(i):

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

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

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

(i) the borrower and, if applicable, the seller sign and deliver to each other or to the

escrow or closing office each document required by:

(A) the real estate purchase contract;

(B) the lender;

(C) the title insurance company;

(D) the escrow or closing office;

(E) the written escrow instructions; or

(F) applicable law;

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

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

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

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

(tt) "State" means:

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

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

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

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

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

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

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

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

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

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

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

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

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

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

(C) identifies each control person for the entity;

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

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

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

(ii) a notarized letter to the division that:

(A) is on the entity's letterhead;

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

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

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

(b) if the applicant is an individual:

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

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(ii) authorize periodic criminal background checks through the nationwide database, at times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, accessing[~~:(A) the Utah Bureau of Criminal Identification, if the nationwide database is able to obtain information from the Utah Bureau of Criminal Identification; and (B)~~] the Federal Bureau of Investigation;

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

(iv) submit evidence using a method approved by the division by rule of having successfully passed any required licensing examination in accordance with Section 61-2c-204.1;

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

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

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

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

(c) pay to the division:

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

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

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

(i) meets the qualifications for licensure; and

(ii) complies with this section.

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



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

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

(ii) issue a conditional license:

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

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

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

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

(ii) determine whether an applicant meets the qualifications for licensure;

(iii) conduct a necessary hearing on an application; and

(iv) approve or deny a license application without concurrence by the commission.

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

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

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

Section ~~7~~6. Section **61-2c-204.1** is amended to read:

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

(1) As used in this section:

(a) "Approved continuing education course" means a course of continuing education

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that is approved by the nationwide database [~~or by the division~~].

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

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

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

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

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

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

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

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

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

or

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

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

(3) (a) The division may not:

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

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

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

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

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

(A) in the number of hours required by rule made by the division in accordance with

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Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

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

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

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

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

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

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

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

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

(i) meets the minimum federal licensing requirements; and

(ii) is administered by an approved examination provider.

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

(i) fundamentals of the English language;

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(ii) arithmetic;  
(iii) provisions of this chapter;  
(iv) advanced residential mortgage principles and practices; and  
(v) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.

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

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

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

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

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

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

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

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

- (a) give or receive a referral fee;
- (b) charge a fee in connection with a residential mortgage loan transaction:
  - (i) that is excessive; or
  - (ii) without providing to the loan applicant a written statement signed by the loan

applicant:

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

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

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

(i) safeguard the interests of the public; or

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

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

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

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

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

(f) violate or not comply with:

(i) this chapter;

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

(iii) a rule made by the division;

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

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

(ii) a request for information from the division;

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

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

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

(i) appraiser;

(ii) escrow agent;

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- (iii) real estate agent;
- (iv) general contractor; or
- (v) title insurance producer;
- (j) engage in unprofessional conduct as defined by rule;
- (k) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;
- (l) engage in false or misleading advertising;
- (m) (i) fail to account for money received in connection with a residential mortgage loan;
- (ii) use money for a different purpose from the purpose for which the money is received; or
- (iii) except as provided in Subsection (4), retain money paid for services if the services are not performed;
- (n) fail to provide a prospective borrower a copy of each appraisal and any other written valuation developed in connection with an application for credit that is to be secured by a first lien on a dwelling in accordance with Subsection (5);
- (o) engage in an act that is performed to:
  - (i) evade this chapter; or
  - (ii) assist another person to evade this chapter;
- (p) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;
- (q) in the case of the lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of:
  - (i) unlicensed staff; or
  - (ii) a mortgage loan originator who is affiliated with the lending manager;
- (r) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter;
- (s) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
  - (i) provide a title insurance product or service without the approval required by Section 31A-2-405; or

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

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

- (i) advertising;
- (ii) a business card;
- (iii) stationery;
- (iv) a brochure;
- (v) a sign;
- (vi) a rate list; or
- (vii) other promotional item;

(u) (i) engage in an act of loan modification assistance without being licensed under this chapter;

(ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;

(iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;

(iv) request or require a person to pay a fee before obtaining:

- (A) a written offer for a loan modification from the person's lender or servicer; and
- (B) the person's written acceptance of the offer from the lender or servicer;

(v) induce a person seeking a loan modification to hire the licensee to engage in an act of loan modification assistance by:

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

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

- (I) a government agency;
- (II) the person's lender or loan servicer; or
- (III) a nonprofit or charitable institution;

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(vi) recommend or participate in a loan modification that requires a person to:

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

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

(C) refrain from contacting the person's:

(I) lender;

(II) loan servicer;

(III) attorney;

(IV) credit counselor; or

(V) housing counselor; or

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

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

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

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

(i) the Federal Home Loan Mortgage Corporation; or

(ii) the Federal National Mortgage Association.

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

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

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

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

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



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

(a) be convicted of:

(i) a felony; or

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

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

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

(b) plead guilty or nolo contendere to:

(i) a felony; or

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

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

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

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

(i) a felony; or

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

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

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

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

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

(i) this chapter; or

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

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

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

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

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licensee; and

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

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

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

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

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

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

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

(ii) at the settlement.

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

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

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

Section ~~9~~8. Section **61-2e-306** is amended to read:

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

(1) [~~Except within the first 30 days after the day on which an appraiser is first added to~~

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~~the appraiser panel of an appraisal management company, an~~ An appraisal management company may not remove the appraiser from ~~[its] the appraisal management company's~~ appraiser panel, or otherwise refuse to assign a request for a real estate appraisal activity to the appraiser without:

(a) notifying the appraiser in writing of:

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

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

(A) illegal conduct; or

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

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

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

Section ~~{10}~~9. Section **61-2f-205** is amended to read:

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

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

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

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

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

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

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

Section ~~{11}~~10. Section **61-2f-401** is amended to read:

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

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

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

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earned the compensation;

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

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

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

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

(b) the identification of real estate;

(c) the sale or rental price;

(d) money received in trust;

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

(f) any other information required by rule;

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

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

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

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

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

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

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

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

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

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

(a) be convicted of:

(i) a felony; or

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

(A) a class A misdemeanor;

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(B) a class B misdemeanor; or

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

(b) plead guilty or nolo contendere to:

(i) a felony; or

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

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

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

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

(i) a felony; or

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

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

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

~~[(13)]~~ (12) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

~~[(14)]~~ (13) in the case of a principal broker or a branch broker, failing to exercise active and reasonable supervision, as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the principal broker's or branch broker's licensed or unlicensed staff;

~~[(15)]~~ (14) violating or disregarding:

(a) this chapter;

(b) an order of the commission; or

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

~~[(16)]~~ (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;

~~[(17)]~~ (16) any other conduct which constitutes dishonest dealing;

~~[(18) unprofessional conduct as defined by statute or rule;]~~

~~[(19)]~~ (17) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:

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

(b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;

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

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce documents or records;

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

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

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

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

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

(b) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;

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

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

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

(A) a government agency;

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

(C) a nonprofit or charitable institution; or

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

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

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

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

(D) credit counselor; or

(E) housing counselor;

~~[(24)]~~ (22) taking or removing from the premises of a main office or a branch office, or otherwise limiting a real estate brokerage's access to or control over, a record that:

(a) (i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated independent contractor prepared; and

(ii) is related to the business of:

(A) the real estate brokerage; or

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

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

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

~~[(26)]~~ (24) as a sales agent or associate broker, placing a lien on real property for an unpaid commission or other compensation related to real estate brokerage services; or

~~[(27)]~~ (25) failing to timely disclose to a buyer or seller an affiliated business arrangement, as defined in Section 31A-23a-1001, in accordance with the federal Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.

Section ~~{12}~~ 11. Section **61-2f-402** is amended to read:

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

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

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



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

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

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

- (e) serve a subpoena by certified mail.

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

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

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

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

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

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

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

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

- (i) Section 61-2f-206;
- (ii) Subsection 61-2f-401(8), which prohibits failure to voluntarily furnish a copy of a

document to the parties before and after the execution of a document; or

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

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

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

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

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

Section ~~{13}~~12. Section 61-2g-401 is amended to read:

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

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

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

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

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

(i) only the individual is certified; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the signing of an appraisal report; or

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

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

- (a) the trainee's name; and
- (b) the extent to which the trainee assists in the preparation of the appraisal report.

Section ~~{14}~~13. Section **61-2g-405** is amended to read:

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

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

- (a) each written contract engaging the person's services for real estate or real property appraisal work;
- (b) each appraisal report prepared or signed by the person; and
- (c) the supporting data assembled and formulated by the appraiser in preparing each appraisal report.

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

- (a) five years; or
- (b) two years following the date of the final disposition of the litigation.

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

Section ~~{15}~~14. Section **61-2g-502** is amended to read:

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

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

- (i) registered, licensed, or certified under this chapter; or
- (ii) required to be registered, licensed, or certified under this chapter.

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

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

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

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

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

(v) ordering remedial education;

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

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

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

(vii) issuing a cease and desist order;

(viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board, with the concurrence of the division, finds that the person complies with court ordered restitution; or

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

(c) (i) If the board or division issues an order that orders a fine or educational requirements as part of the disciplinary action against a person, including a stipulation and order, the board or division shall state in the order the deadline by which the person shall comply with the fine or educational requirements.

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

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

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

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

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

(I) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

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

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

(i) by fraud; or

(ii) by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;

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

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

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

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

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

(i) be convicted of a felony;

(ii) be convicted of any of the following involving fraud, misrepresentation, theft, or

dishonesty:

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

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

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

(iv) plead guilty or nolo contendere to any of the following involving fraud,

misrepresentation, theft, or dishonesty:

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

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

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

(vi) enter into a plea in abeyance agreement involving any of the following involving

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fraud, misrepresentation, theft, or dishonesty:

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

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

(f) engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;

(g) paying a finder's fee or a referral fee to a person not licensed or certified under this chapter in connection with an appraisal of real estate or real property in this state;

(h) making a false or misleading statement in:

(i) that portion of a written appraisal report that deals with professional qualifications;

or

(ii) testimony concerning professional qualifications;

(i) violating or disregarding:

(i) this chapter;

(ii) an order of:

(A) the board; or

(B) the division, in a case when the board delegates to the division the authority to make a decision on behalf of the board; or

(iii) a rule issued under this chapter;

(j) violating the confidential nature of governmental records to which a person registered, licensed, or certified under this chapter gained access through employment or engagement as an appraiser by a governmental agency;

(k) accepting a contingent fee for performing an appraisal if in fact the fee is or was contingent upon:

(i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

(ii) the analysis, opinion, conclusion, or valuation reached; or

(iii) the consequences resulting from the appraisal assignment;

(l) unprofessional conduct as defined by statute or rule;

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

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

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

(n) other conduct that constitutes dishonest dealing.

(3) A person previously licensed, certified, or registered under this chapter remains responsible for, and is subject to disciplinary action for, an act that the person committed, while the person was licensed, certified, or registered, in violation of this chapter or an administrative rule in effect at the time that the person committed the act, regardless of whether the person is currently licensed, certified, or registered.