

1 **DIVISION OF REAL ESTATE AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Calvin R. Musselman**

5 Senate Sponsor: Kirk A. Cullimore

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of Title 61, Securities Division - Real Estate Division,  
10 regarding real estate.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ removes a provision regarding the payment of expenses incurred by the division in  
14 processing an application to transact the business of residential mortgage loans;
- 15 ▶ amends the general qualifications of licensure to transact the business of residential  
16 mortgage loans;
- 17 ▶ amends provisions related to disciplinary action under the Utah Residential  
18 Mortgage Practices and Licensing Act;
- 19 ▶ removes a provision regarding the payment of costs incurred by the division after  
20 the finding of a violation under the Appraisal Management Company Registration  
21 and Regulation Act;
- 22 ▶ amends provisions under the Real Estate Licensing and Practices Act related to:
  - 23 • licensing, fees, and disciplinary action; and
  - 24 • rulemaking of the Real Estate Commission; and
- 25 ▶ makes technical and conforming changes.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **61-2c-202**, as last amended by Laws of Utah 2020, Chapter 72
- 33 **61-2c-203**, as last amended by Laws of Utah 2012, Chapter 166
- 34 **61-2c-402**, as last amended by Laws of Utah 2016, Chapter 384
- 35 **61-2e-401**, as last amended by Laws of Utah 2018, Chapter 213
- 36 **61-2f-103**, as last amended by Laws of Utah 2021, Chapter 259
- 37 **61-2f-202**, as last amended by Laws of Utah 2018, Chapters 213 and 462
- 38 **61-2f-203**, as last amended by Laws of Utah 2021, Chapter 259
- 39 **61-2f-204**, as last amended by Laws of Utah 2019, Chapter 337
- 40 **61-2f-206**, as last amended by Laws of Utah 2021, Chapter 259
- 41 **61-2f-207**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 42 **61-2f-401**, as last amended by Laws of Utah 2020, Chapter 72
- 43 **61-2f-402**, as last amended by Laws of Utah 2020, Chapter 72



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

46 Section 1. Section **61-2c-202** is amended to read:

47 **61-2c-202. Licensure procedures.**

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

- 50 (a) if the applicant is an entity, submit:
  - 51 (i) through the nationwide database, a licensure statement that:
    - 52 (A) lists any name under which the entity will transact business in this state;
    - 53 (B) lists the address of the principal business location of the entity;
    - 54 (C) identifies each control person for the entity;
    - 55 (D) identifies each jurisdiction in which the entity is registered, licensed, or otherwise
    - 56 regulated in the business of residential mortgage loans;
    - 57 (E) discloses any adverse administrative action taken by an administrative agency
    - 58 against the entity or a control person for the entity; and

- 59 (F) discloses any history of criminal proceedings that involves a control person of the  
60 entity; and
- 61 (ii) a notarized letter to the division that:
- 62 (A) is on the entity's letterhead;
- 63 (B) is signed by the entity's owner, director, or president;
- 64 (C) authorizes the principal lending manager to do business under the entity's name and  
65 under each of the entity's licensed trade names, if any; and
- 66 (D) includes any information required by the division by rule;
- 67 (b) if the applicant is an individual:
- 68 (i) submit a licensure statement that identifies the entity with which the applicant is  
69 sponsored;
- 70 (ii) authorize periodic criminal background checks through the nationwide database, at  
71 times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah  
72 Administrative Rulemaking Act, accessing the Federal Bureau of Investigation;
- 73 (iii) submit evidence using a method approved by the division by rule of having  
74 successfully completed approved prelicensing education in accordance with Section  
75 [61-2c-204.1](#);
- 76 (iv) submit evidence using a method approved by the division by rule of having  
77 successfully passed any required licensing examination in accordance with Section  
78 [61-2c-204.1](#);
- 79 (v) submit evidence using a method approved by the division by rule of having  
80 successfully registered in the nationwide database, including paying a fee required by the  
81 nationwide database; and
- 82 (vi) authorize the division to obtain independent credit reports:
- 83 (A) through a consumer reporting agency described in Section 603(p) of the Fair Credit  
84 Reporting Act, 15 U.S.C. Sec. 1681a; and
- 85 (B) at times provided by rule that the division makes in accordance with Title 63G,  
86 Chapter 3, Utah Administrative Rulemaking Act; and
- 87 (c) pay to the division~~[-(i)]~~ an application fee established by the division in accordance  
88 with Section [63J-1-504](#)~~[-and]~~.
- 89 ~~[(ii) the reasonable expenses incurred by the division in processing the application for~~

90 licensure.]

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

93 (i) meets the qualifications for licensure; and

94 (ii) complies with this section.

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

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

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

103 (ii) issue a conditional license:

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

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

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

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

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

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

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

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

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

120 (d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4,

121 Administrative Procedures Act, an applicant who is denied licensure under this chapter may  
122 submit a request for agency review to the executive director within 30 days following the day  
123 on which the commission order denying the licensure is issued.

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

125 **61-2c-203. General qualifications for licensure.**

126 (1) To qualify for licensure under this chapter, a person shall demonstrate through  
127 procedures established by rule made by the division in accordance with Title 63G, Chapter 3,  
128 Utah Administrative Rulemaking Act:

129 (a) financial responsibility;

130 (b) [~~good moral character,~~] honesty, integrity, and truthfulness; and

131 (c) the competence to transact the business of residential mortgage loans, including  
132 general fitness such as to command the confidence of the community and to warrant a  
133 determination that the person will operate honestly, fairly, and efficiently within the purposes  
134 of this chapter.

135 (2) If an applicant is an entity, the applicant may not have a control person who fails to  
136 meet the requirements of Subsection (1) for an individual applicant.

137 (3) (a) The division shall determine whether an applicant with a criminal history  
138 qualifies for licensure.

139 (b) If the division, acting under Subsection (3)(a), denies or restricts a license or places  
140 a license on probation, the applicant may petition the commission for de novo review of the  
141 application.

142 Section 3. Section **61-2c-402** is amended to read:

143 **61-2c-402. Disciplinary action.**

144 (1) Subject to the requirements of Section [61-2c-402.1](#), the commission, with the  
145 concurrence of the division, may impose a sanction described in Subsection (2) against a  
146 person if the person:

147 (a) (i) is a licensee[~~, a person previously licensed under this chapter for an act the~~  
148 ~~person committed while licensed,~~] or a person required to be licensed under this chapter; and

149 (ii) violates this chapter; or

150 (b) (i) is not registered under this chapter; and

151 (ii) violated a provision of this chapter during a period in which:

152           (A) the provision of this chapter was in effect; and  
153           (B) the person was registered or required to be registered under this chapter; or  
154           ~~[(b)]~~ (c) (i) is a certified education provider or person required to be certified to  
155 provide prelicensing or continuing education under this chapter; and  
156           (ii) violates this chapter.  
157           (2) The commission, with the concurrence of the director, may against a person  
158 described in Subsection (1):  
159           (a) impose an educational requirement;  
160           (b) impose a civil penalty against the individual or entity in an amount not to exceed  
161 the greater of:  
162           (i) \$5,000 for each violation; or  
163           (ii) the amount equal to any gain or economic benefit derived from each violation;  
164           (c) deny an application for an original license;  
165           (d) do any of the following to a license under this chapter:  
166           (i) suspend;  
167           (ii) revoke;  
168           (iii) place on probation;  
169           (iv) reduce a lending manager license to a loan originator license;  
170           (v) deny renewal;  
171           (vi) deny reinstatement; or  
172           (vii) in the case of a denial of a license or a suspension that extends to the expiration  
173 date of a license, set a waiting period for a person to apply for a license under this chapter;  
174           (e) issue a cease and desist order;  
175           (f) require the reimbursement of the division of costs incurred by the division related to  
176 the recovery, storage, or destruction of a record that the person disposes of in a manner that  
177 violates this chapter or a rule made under this chapter;  
178           (g) modify a sanction described in Subsections (2)(a) through (f) if the commission  
179 finds that the person complies with court ordered restitution; or  
180           (h) impose any combination of sanctions described in this Subsection (2).  
181           (3) (a) If the commission, with the concurrence of the division, issues an order that  
182 orders a fine or educational requirements as part of a disciplinary action against a person,

183 including a stipulation and order, the commission shall state in the order the deadline by which  
184 the person shall comply with the fine or educational requirements.

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

186 (i) the person's license or certificate is automatically suspended:

187 (A) beginning the day specified in the order as the deadline for compliance; and

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

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

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

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

194 (4) (a) A person whose license was revoked under this chapter before May 11, 2010,  
195 may request that the revocation be converted to a suspension under this Subsection (4):

196 (i) if the revocation was not as a result of a felony conviction involving fraud,  
197 misrepresentation, deceit, dishonesty, breach of trust, or money laundering; and

198 (ii) by filing a written request with the division.

199 (b) Upon receipt of a request to convert a revocation under this Subsection (4), the  
200 commission, with the concurrence of the director, shall determine whether to convert the  
201 revocation.

202 (c) The commission may delegate to the division the authority to make a decision on  
203 whether to convert a revocation.

204 (d) If the division, acting under Subsection (4)(c), denies a request to convert a  
205 revocation, the person who requests the conversion may appeal the decision in a hearing  
206 conducted by the commission:

207 (i) after the division denies the request to convert the revocation; and

208 (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

209 (e) The commission may delegate to the division or an administrative law judge the  
210 authority to conduct a hearing described in Subsection (4)(d).

211 (5) (a) A person whose license the commission revokes in accordance with this section  
212 may file a written request with the division for the vacation of the license revocation, if the  
213 person:

214 (i) has not held a license under this chapter for at least eight years before the day on  
215 which the person files the request; and

216 (ii) has not been convicted of a felony involving:

217 (A) fraud;

218 (B) misrepresentation;

219 (C) deceit;

220 (D) dishonesty;

221 (E) breach of trust; or

222 (F) money laundering.

223 (b) After receiving a written request a person makes in accordance with Subsection

224 (5)(a), the commission may vacate the revocation of the person's license:

225 (i) after a hearing; and

226 (ii) with the concurrence of the division.

227 (c) A person whose license revocation is vacated in accordance with this Subsection

228 (5) may apply for licensure in accordance with this chapter.

229 Section 4. Section **61-2e-401** is amended to read:

230 **61-2e-401. Division authority -- Immunity -- Transmission of reports to Appraisal**  
231 **Subcommittee.**

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

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

237 (ii) receive and act on a complaint including:

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

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

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



- 245 (iv) employ one or more investigators, clerks, or other employees or agents if:
- 246 (A) approved by the executive director; and
- 247 (B) within the budget of the division; and
- 248 (v) issue a subpoena that requires:
- 249 (A) the attendance and testimony of a witness; or
- 250 (B) the production of evidence.
- 251 (b) (i) A court of competent jurisdiction shall enforce, according to the practice and
- 252 procedure of the court, a subpoena issued by the division.
- 253 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
- 254 required by the service statutes of the state where the witness or evidence is located.
- 255 (c) A failure to respond to a request by the division in an investigation under this
- 256 chapter within 10 days after the day on which the request is served is considered to be a
- 257 separate violation of this chapter, including:
- 258 (i) failing to respond to a subpoena;
- 259 (ii) withholding evidence; or
- 260 (iii) failing to produce a document or record.
- 261 ~~[(2) (a) If a person is found to have violated this chapter or a rule made under this~~
- 262 ~~chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,~~
- 263 ~~document, or record required under this chapter, including the costs incurred to copy an~~
- 264 ~~electronic book, paper, contract, document, or record in a universally readable format.]~~
- 265 ~~[(b) If a person fails to pay the costs described in Subsection (2)(a) when due, the~~
- 266 ~~person's registration is automatically suspended:]~~
- 267 ~~[(i) beginning the day on which the payment of costs is due; and]~~
- 268 ~~[(ii) ending the day on which the costs are paid in full.]~~
- 269 ~~[(3)]~~ (2) The division is immune from a civil action or criminal prosecution for
- 270 initiating or assisting in a lawful investigation of an act or participating in a disciplinary
- 271 proceeding under this chapter if the division takes the action:
- 272 (a) without malicious intent; and
- 273 (b) in the reasonable belief that the action is taken pursuant to the powers and duties
- 274 vested in the division under this chapter.
- 275 ~~[(4)]~~ (3) Upon the Appraisal Subcommittee's request, the division shall timely transmit

276 a report to the Appraisal Subcommittee regarding the division's supervisory activities involving  
277 appraisal management companies or other third-party providers of appraisals and appraisal  
278 management services, including any investigation the division initiates or disciplinary action  
279 the division takes.

280 Section 5. Section **61-2f-103** is amended to read:

281 **61-2f-103. Real Estate Commission.**

282 (1) There is created within the division a Real Estate Commission.

283 (2) The commission shall:

284 (a) subject to concurrence by the division and in accordance with Title 63G, Chapter 3,  
285 Utah Administrative Rulemaking Act, make rules for the administration of this chapter that are  
286 not inconsistent with this chapter, including:

287 (i) licensing of:

288 (A) a principal broker;

289 (B) an associate broker; and

290 (C) a sales agent;

291 (ii) registration of:

292 (A) an entity;

293 (B) an assumed name under which a person conducts business;

294 (C) a branch office; and

295 (D) a property management company;

296 (iii) prelicensing and postlicensing education curricula;

297 (iv) examination procedures;

298 (v) the certification and conduct of:

299 (A) a real estate school;

300 (B) a course provider; or

301 (C) an instructor;

302 (vi) proper handling of money received by a licensee under this chapter;

303 (vii) brokerage office procedures and recordkeeping requirements;

304 (viii) property management;

305 (ix) standards of conduct for a licensee under this chapter; **[and]**

306 (x) if the commission, with the concurrence of the division, determines necessary, a

307 rule as provided in Subsection [61-2f-306](#)(3) regarding a legal form;

308 (xi) the qualification and designation of an acting principal broker in the event a  
309 principal broker dies, is incapacitated, or is unable to perform the duties of a principal broker,  
310 as described in Section [61-2f-202](#); and

311 (xii) giving or paying an inducement gift or a closing gift to a buyer or seller in a real  
312 property transaction;

313 (b) establish, with the concurrence of the division, a fee provided for in this chapter,  
314 except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;

315 (c) conduct an administrative hearing not delegated by the commission to an  
316 administrative law judge or the division relating to the:

317 (i) licensing of an applicant;

318 (ii) conduct of a licensee;

319 (iii) the certification or conduct of a real estate school, course provider, or instructor  
320 regulated under this chapter; or

321 (iv) violation of this chapter by any person;

322 (d) with the concurrence of the director, impose a sanction as provided in Section  
323 [61-2f-404](#);

324 (e) advise the director on the administration and enforcement of a matter affecting the  
325 division and the real estate sales and property management industries;

326 (f) advise the director on matters affecting the division budget;

327 (g) advise and assist the director in conducting real estate seminars; and

328 (h) perform other duties as provided by this chapter.

329 (3) (a) Except as provided in Subsection (3)(b), a state entity may not, without the  
330 concurrence of the commission, make a rule that changes the rights, duties, or obligations of  
331 buyers, sellers, or persons licensed under this chapter in relation to a real estate transaction  
332 between private parties.

333 (b) Subsection (3)(a) does not apply to a rule made:

334 (i) under Title 31A, Insurance Code, or Title 7, Financial Institutions Act; or

335 (ii) by the Department of Commerce or any division or other rulemaking body within  
336 the Department of Commerce.

337 (4) (a) The commission shall be comprised of five members appointed by the governor

338 and approved by the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies.

339 (b) Four of the commission members shall:

340 (i) have at least five years' experience in the real estate business; and

341 (ii) hold an active principal broker, associate broker, or sales agent license.

342 (c) One commission member shall be a member of the general public.

343 (d) The governor may not appoint a commission member described in Subsection  
344 (4)(b) who, at the time of appointment, resides in the same county in the state as another  
345 commission member.

346 (e) At least one commission member described in Subsection (4)(b) shall at the time of  
347 an appointment reside in a county that is not a county of the first or second class.

348 (5) (a) Except as required by Subsection (5)(b), as terms of current commission  
349 members expire, the governor shall appoint each new member or reappointed member to a  
350 four-year term ending June 30.

351 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the  
352 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
353 commission members are staggered so that approximately half of the commission is appointed  
354 every two years.

355 (c) Upon the expiration of the term of a member of the commission, the member of the  
356 commission shall continue to hold office until a successor is appointed and qualified.

357 (d) A commission member may not serve more than two consecutive terms.

358 (e) Members of the commission shall annually select one member to serve as chair.

359 (6) When a vacancy occurs in the membership for any reason, the governor, with the  
360 advice and consent of the Senate, shall appoint a replacement for the unexpired term.

361 (7) A member may not receive compensation or benefits for the member's service, but  
362 may receive per diem and travel expenses in accordance with:

363 (a) Section [63A-3-106](#);

364 (b) Section [63A-3-107](#); and

365 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and  
366 [63A-3-107](#).

367 (8) (a) The commission shall meet at least monthly.

368 (b) The director may call additional meetings:

- 369 (i) at the director's discretion;
- 370 (ii) upon the request of the chair; or
- 371 (iii) upon the written request of three or more commission members.
- 372 (9) Three members of the commission constitute a quorum for the transaction of
- 373 business.
- 374 (10) A member of the commission shall comply with the conflict of interest provisions
- 375 described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.
- 376 Section 6. Section **61-2f-202** is amended to read:
- 377 **61-2f-202. Exempt persons and transactions.**
- 378 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
- 379 required for:
- 380 (i) a person who as owner or lessor performs an act described in Subsection
- 381 **61-2f-102(20)** with reference to real estate owned or leased by that person;
- 382 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
- 383 to nonresidential real estate owned or leased by the employer, performs an act described in
- 384 Subsection **61-2f-102(20)(b)** or (c);
- 385 (iii) a regular salaried employee of the owner of real estate who performs property
- 386 management services with reference to real estate owned by the employer, except that the
- 387 employee may only manage real estate for one employer;
- 388 (iv) an individual who performs property management services for the apartments at
- 389 which that individual resides in exchange for free or reduced rent on that individual's
- 390 apartment;
- 391 (v) a regular salaried employee of a condominium homeowners' association who
- 392 manages real estate subject to the declaration of condominium that established the
- 393 condominium homeowners' association, except that the employee may only manage real estate
- 394 for one condominium homeowners' association; [~~and~~]
- 395 (vi) a regular salaried employee of a licensed property management company or real
- 396 estate brokerage who performs support services, as prescribed by rule, for the property
- 397 management company or real estate brokerage[-]; or
- 398 (vii) in the event a principal broker dies, is incapacitated, or is unable to perform the
- 399 duties of a principal broker, an individual qualified and designated as the commission

400 determines by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
401 Rulemaking Act, with the concurrence of the division, as an acting principal broker:

402 (A) in relation to each transaction pending on the day on which the principal broker  
403 dies, becomes incapacitated, or becomes unable to perform the duties of a principal broker,  
404 including the distribution of compensation for each transaction; and

405 (B) until the day on which each transaction described in Subsection (1)(a)(vii)(A) is  
406 completed.

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

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

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

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

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

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

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

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

419 (b) subject to Subsection 61-2f-401(5), services rendered by an attorney admitted to  
420 practice law in this state in performing the attorney's duties as an attorney;

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

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

424 (e) a public utility, officer of a public utility, or regular salaried employee of a public  
425 utility, unless performance of an act described in Subsection 61-2f-102(20) is in connection  
426 with the sale, purchase, lease, or other disposition of real estate or investment in real estate  
427 unrelated to the principal business activity of that public utility;

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

- 431 (i) the acquisition of real estate pursuant to Section 72-5-103;  
432 (ii) the disposal of real estate pursuant to Section 72-5-111;  
433 (iii) services that constitute property management; or  
434 (iv) the leasing of real estate; and  
435 (g) a regular salaried employee of a county, city, or town when performing an act on  
436 behalf of the county, city, or town:
- 437 (i) in accordance with:
- 438 (A) if a regular salaried employee of a city or town:
- 439 (I) Title 10, Utah Municipal Code; or  
440 (II) Title 11, Cities, Counties, and Local Taxing Units; and  
441 (B) if a regular salaried employee of a county:
- 442 (I) Title 11, Cities, Counties, and Local Taxing Units; and  
443 (II) Title 17, Counties; and  
444 (ii) in connection with one or more of the following:
- 445 (A) the acquisition of real estate, including by eminent domain;  
446 (B) the disposal of real estate;  
447 (C) services that constitute property management; or  
448 (D) the leasing of real estate.
- 449 (3) A license under this chapter is not required for an individual registered to act as a  
450 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the  
451 sale or the offer for sale of real estate if:
- 452 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the  
453 Securities Act of 1933 and the Securities Exchange Act of 1934; and  
454 (ii) the security is registered for sale in accordance with:
- 455 (A) the Securities Act of 1933; or  
456 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or  
457 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.  
458 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation  
459 D, Rule 506, 17 C.F.R. Sec. 230.506; and  
460 (ii) the selling agent and the purchaser are not residents of this state.  
461 (4) Except as otherwise provided by statute or rule, the following individuals may

462 engage in the practice of an occupation or profession regulated by this chapter, subject to the  
463 stated circumstances and limitations, without being licensed under this chapter:

464 (a) an individual licensed under the laws of this state, other than under this chapter, to  
465 practice or engage in an occupation or profession, while engaged in the lawful, professional,  
466 and competent practice of that occupation or profession;

467 (b) an individual serving in the armed forces of the United States, the United States  
468 Public Health Service, the United States Department of Veterans Affairs, or any other federal  
469 agency while engaged in activities regulated under this title as a part of employment with that  
470 federal agency if the individual holds a valid license to practice the regulated occupation or  
471 profession issued by any other state or jurisdiction recognized by the department; and

472 (c) the spouse of an individual serving in the armed forces of the United States while  
473 the individual is stationed within this state, if:

474 (i) the spouse holds a valid license to practice the regulated occupation or profession  
475 issued by any other state or jurisdiction recognized by the department; and

476 (ii) the license is current and the spouse is in good standing in the state or jurisdiction  
477 of licensure.

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

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

480 (b) a mortgagee;

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

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

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

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

489 Section 7. Section **61-2f-203** is amended to read:

490 **61-2f-203. Licensing requirements.**

491 (1) (a) (i) The division shall determine whether an applicant with a criminal history  
492 qualifies for licensure.



493 (ii) If the division, acting under Subsection (1)(a)(i), denies or restricts a license or  
 494 places a license on probation, the applicant may petition the commission for de novo review of  
 495 the application.

496 (b) Except as provided in Subsection (6), the commission shall determine all other  
 497 qualifications and requirements of an applicant for:

498 (i) a principal broker license;

499 (ii) an associate broker license; or

500 (iii) a sales agent license.

501 (c) The division, with the concurrence of the commission, shall require and pass upon  
 502 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of  
 503 each applicant for an initial license or for renewal of an existing license.

504 (d) (i) (A) [The] Except as provided in Subsection (1)(d)(i)(B), the division, with the  
 505 concurrence of the commission, shall require an applicant for[-(A)] a sales agent license to  
 506 complete [an approved] a division-approved educational program consisting of [the number of  
 507 hours designated by rule made by the commission with the concurrence of the division, except  
 508 that the rule may not require less than 120 hours; and] not less than 120 hours, as designated by  
 509 rule the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative  
 510 Rulemaking Act, with the concurrence of the division.

511 (B) If on the day on which an applicant for a sales agent license applies for the license  
 512 the applicant is licensed as a real estate sales agent in another state, the division may require the  
 513 applicant to complete a division-approved, state-specific educational program consisting of the  
 514 number of hours designated by rule the commission makes in accordance with Title 63G,  
 515 Chapter 3, Utah Administrative Rulemaking Act, with the concurrence of the division.

516 ~~(B)~~ (ii) (A) Except as provided in Subsection (1)(d)(ii)(B), the division, with the  
 517 concurrence of the commission, shall require an applicant for an associate broker or a principal  
 518 broker license to complete [an approved] a division-approved educational program consisting  
 519 of [the number of hours designated by rule made by the commission with the concurrence of  
 520 the division, except that the rule may not require less than 120 hours] not less than 120 hours,  
 521 as designated by rule the commission makes in accordance with Title 63G, Chapter 3, Utah  
 522 Administrative Rulemaking Act, with the concurrence of the division.

523 (B) If on the day on which an applicant for an associate broker or a principal broker

524 license applies for the license the applicant is licensed as a real estate broker in another state,  
 525 the division may require the applicant to complete a division-approved, state-specific  
 526 educational program consisting of the number of hours designated by rule the commission  
 527 makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, with the  
 528 concurrence of the division.

529        [(ii)] (iii) An hour required by this section means 50 minutes of instruction in each 60  
 530 minutes.

531        [(iii)] (iv) The maximum number of program hours available to an individual is eight  
 532 hours per day.

533        (e) (i) [~~The~~] Except as provided in Subsection (1)(e)(ii), the division, with the  
 534 concurrence of the commission, shall require [the] an applicant to pass an examination  
 535 approved by the commission covering:

536        [(i)] (A) the fundamentals of [~~the~~(A)] the English language;

537        (B) the fundamentals of arithmetic;

538        (C) the fundamentals of bookkeeping; [~~and~~]

539        (D) the fundamentals of real estate principles and practices;

540        [(ii)] (E) this chapter;

541        [(iii)] (F) the rules established by the commission with the concurrence of the division;

542 and

543        [(iv)] (G) any other aspect of Utah real estate license law considered appropriate.

544        (ii) If on the day on which an applicant applies for a license the applicant is licensed as  
 545 a real estate broker or a sales agent in another state, the division may, with the concurrence of  
 546 the commission, require the applicant to pass a division-approved, state-specific examination  
 547 rather than the examination required under Subsection (1)(e)(i).

548        (f) (i) Three years' full-time experience as a sales agent or its equivalent is required  
 549 before an applicant may apply for, and secure a principal broker or associate broker license in  
 550 this state.

551        (ii) The commission shall establish by rule made in accordance with Title 63G,  
 552 Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, the  
 553 criteria by which the commission will accept experience or special education in similar fields  
 554 of business in lieu of the three years' experience.

555 (2) (a) The division, with the concurrence of the commission, may require an applicant  
556 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's  
557 reputation and competency as set forth by rule.

558 (b) The division shall require an applicant to provide the applicant's social security  
559 number, which is a private record under Subsection 63G-2-302(1)(i).

560 (3) (a) An individual who is not a resident of this state may be licensed in this state if  
561 the person complies with this chapter.

562 (b) An individual who is not a resident of this state may be licensed as an associate  
563 broker or sales agent in this state by:

564 (i) complying with this chapter; and

565 (ii) being employed or engaged as an independent contractor by or on behalf of a  
566 principal broker who is licensed in this state, regardless of whether the principal broker is a  
567 resident of this state.

568 (4) The division, with the concurrence of the commission, may enter into a reciprocal  
569 licensing agreement with another jurisdiction for the licensure of a principal broker, an  
570 associate broker, or a sales agent, if the jurisdiction's requirements and standards for the license  
571 are substantially similar to those of this state.

572 (5) (a) The division and commission shall treat an application to be relicensed of an  
573 applicant whose real estate license is revoked as an original application.

574 (b) In the case of an applicant for a new license as a principal broker or associate  
575 broker, the applicant is not entitled to credit for experience gained before the revocation of a  
576 real estate license.

577 (6) (a) Notwithstanding Subsection (1)(b), the commission may delegate to the division  
578 the authority to:

579 (i) review a class or category of applications for initial or renewed licenses;

580 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

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

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

586 (ii) An applicant who is denied licensure pursuant to this Subsection (6) may seek  
587 agency review by the executive director only after the commission has reviewed the division's  
588 denial of the applicant's application.

589 Section 8. Section **61-2f-204** is amended to read:

590 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

591 (1) (a) Upon filing an application for an examination for a license under this chapter,  
592 the applicant shall pay a nonrefundable fee established in accordance with Section [63J-1-504](#)  
593 for admission to the examination.

594 (b) An applicant for a principal broker, associate broker, or sales agent license shall  
595 pay a nonrefundable fee as determined by the commission with the concurrence of the division  
596 under Section [63J-1-504](#) for issuance of an initial license or license renewal.

597 (c) A license issued under this Subsection (1) shall be issued for a period of not less  
598 than two years as the division determines with the concurrence of the commission.

599 (d) (i) Each of the following applicants shall comply with this Subsection (1)(d):

600 (A) a new sales agent applicant;

601 (B) a principal broker applicant; and

602 (C) an associate broker applicant.

603 (ii) An applicant described in this Subsection (1)(d) shall at the time the licensee files  
604 an application:

605 (A) submit to the division fingerprint cards in a form acceptable to the Department of  
606 Public Safety;

607 (B) submit to the division a signed waiver in accordance with Subsection  
608 [53-10-108\(4\)](#), acknowledging the registration of the applicant's fingerprints in the Federal  
609 Bureau of Investigation Next Generation Identification System's Rap Back Service beginning  
610 January 1, 2020;

611 (C) consent to a criminal background check by the Utah Bureau of Criminal  
612 Identification and the Federal Bureau of Investigation; and

613 (D) pay the fee the division establishes in accordance with Subsection (1)(d)(vi).

614 (iii) The Bureau of Criminal Identification shall:

615 (A) check the fingerprints an applicant submits under Subsection (1)(d)(ii) against the  
616 applicable state, regional, and national criminal records databases, including, beginning

617 January 1, 2020, the Federal Bureau of Investigation Next Generation Identification System;

618 (B) report the results of the background check to the division;

619 (C) maintain a separate file of fingerprints that applicants submit under Subsection

620 (1)(d) for search by future submissions to the local and regional criminal records databases,

621 including latent prints;

622 (D) request that beginning January 1, 2020, the fingerprints be retained in the Federal

623 Bureau of Investigation Next Generation Identification System's Rap Back Service for search

624 by future submissions to national criminal records databases, including the Next Generation

625 Identification System and latent prints; and

626 (E) ensure that the division only receives notifications for an individual with whom the

627 division maintains permission to receive notifications.

628 (iv) (A) The division shall assess an applicant who submits fingerprints under

629 Subsection (1)(d) or (2)(g) a fee in an amount that the division sets in accordance with Section

630 [63J-1-504](#) for services that the division and the Bureau of Criminal Identification or another

631 authorized agency provide under Subsection (1)(d) or (2)(g).

632 (B) The Bureau of Criminal Identification may collect from the division money for

633 services provided under this section.

634 (v) Money paid to the division by an applicant for the cost of the criminal background

635 check is nonlapsing.

636 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

637 and with the concurrence of the division, the commission may make rules for the

638 administration of this Subsection (1)(d) and Subsection (2)(g) regarding criminal background

639 checks with ongoing monitoring.

640 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of

641 the criminal background check.

642 ~~[(ii) A license is immediately and automatically revoked if the criminal background~~

643 ~~check discloses the applicant fails to accurately disclose a criminal history involving:]~~

644 ~~[(A) the real estate industry; or]~~

645 ~~[(B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or~~

646 ~~deceit.]~~

647 ~~[(iii)]~~ (ii) If a criminal background check discloses that an applicant fails to accurately

648 disclose a criminal history [~~other than one described in Subsection (1)(e)(ii)~~], the division:

649 (A) shall review the application; and

650 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,  
651 Utah Administrative Rulemaking Act, may:

652 (I) place a condition on a license;

653 (II) place a restriction on a license;

654 (III) revoke a license; or

655 (IV) refer the application to the commission for a decision.

656 [~~(iv)~~] (iii) (A) A person whose conditional license is [~~automatically revoked under~~  
657 ~~Subsection (1)(e)(ii) or whose license is~~] conditioned, restricted, or revoked under Subsection  
658 [~~(1)(e)(iii)~~] (1)(e)(ii) may have a hearing after the action is taken to challenge the action.

659 (B) The division shall conduct a hearing described in Subsection [~~(1)(d)(iv)(A)~~]  
660 (1)(e)(iii)(A) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

661 [~~(v)~~] (iv) The director shall designate one of the following to act as the presiding  
662 officer in a hearing described in Subsection [~~(1)(e)(iv)(A)~~] (1)(e)(iii)(A):

663 (A) the division; or

664 (B) the division with the concurrence of the commission.

665 [~~(vi)~~] (v) The presiding officer shall decide whether relief from an action under this  
666 Subsection (1)(e) is granted.

667 [~~(vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted~~  
668 ~~only if:~~]

669 [~~(A) the criminal history upon which the division based the revocation;~~]

670 [~~(1) did not occur; or~~]

671 [~~(H) is the criminal history of another person;~~]

672 [~~(B) (1) the revocation is based on a failure to accurately disclose a criminal history;~~  
673 ~~and]~~

674 [~~(H) the applicant has a reasonable good faith belief at the time of application that there~~  
675 ~~was no criminal history to be disclosed; or]~~

676 [~~(C) the division fails to follow the prescribed procedure for the revocation.]~~

677 [~~(viii)~~] (vi) If a license is revoked or a revocation under this Subsection (1)(e) is upheld  
678 after a hearing, the individual may not apply for a new license until at least 12 months after the

679 day on which the license is revoked.

680 (2) (a) (i) A license expires if it is not renewed on or before the expiration date of the  
681 license.

682 (ii) As a condition of renewal, an active licensee shall demonstrate competence by  
683 completing 18 hours of continuing education within a two-year renewal period subject to rules  
684 made by the commission, with the concurrence of the division.

685 (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission  
686 shall consider:

687 (A) evaluating continuing education on the basis of competency, rather than course  
688 time;

689 (B) allowing completion of courses in a significant variety of topic areas that the  
690 division and commission determine are valuable in assisting an individual licensed under this  
691 chapter to increase the individual's competency; and

692 (C) allowing completion of courses that will increase a licensee's professional  
693 competency in the area of practice of the licensee.

694 (iv) The division may award credit to a licensee for a continuing education requirement  
695 of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause,  
696 including:

697 (A) military service; or

698 (B) if an individual is elected or appointed to government service, the individual's  
699 government service during which the individual spends a substantial time addressing real estate  
700 issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3,  
701 Utah Administrative Rulemaking Act.

702 (b) For a period of 30 days after the day on which a license expires, the license may be  
703 reinstated:

704 (i) if the applicant's license was inactive on the day on which the applicant's license  
705 expired, upon payment of a renewal fee and a late fee determined by the commission with the  
706 concurrence of the division under Section [63J-1-504](#); or

707 (ii) if the applicant's license was active on the day on which the applicant's license  
708 expired, upon payment of a renewal fee and a late fee determined by the commission with the  
709 concurrence of the division under Section [63J-1-504](#), and providing proof acceptable to the

710 division and the commission of the licensee having:

711 (A) completed the hours of education required by Subsection (2)(a); or

712 (B) demonstrated competence as required under Subsection (2)(a).

713 (c) After the 30-day period described in Subsection (2)(b), and until ~~[six months after~~

714 ~~the day on which an active or inactive license expires, the license may be reinstated by: (i)~~

715 ~~paying a renewal fee and a late fee determined by the commission with the concurrence of the~~

716 ~~division under Section 63J-1-504; (ii) providing to the division proof of satisfactory~~

717 ~~completion of six hours of continuing education: (A) in addition to the requirements for a~~

718 ~~timely renewal; and (B) on a subject determined by the commission by rule with the~~

719 ~~concurrence of the division and made in accordance with Title 63G, Chapter 3, Utah~~

720 ~~Administrative Rulemaking Act; and (iii) providing proof acceptable to the division and the~~

721 ~~commission of the licensee having: (A) completed the hours of education required under~~

722 ~~Subsection (2)(a); or (B) demonstrated competence as required under Subsection (2)(a). (d)~~

723 ~~After the six-month period described in Subsection (2)(c), and until] one year after the day on~~

724 which an active or inactive license expires, the license may be reinstated by:

725 (i) paying a renewal fee and a late fee determined by the commission with the

726 concurrence of the division under Section 63J-1-504; and

727 ~~[(ii) providing to the division proof of satisfactory completion of 24 hours of~~

728 ~~continuing education:]~~

729 ~~[(A) in addition to the requirements for a timely renewal; and]~~

730 ~~[(B) on a subject determined by the commission by rule made in accordance with Title~~

731 ~~63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division;~~

732 ~~and]~~

733 ~~[(iii)] (ii) providing proof acceptable to the division and the commission of the licensee~~

734 ~~having:~~

735 (A) completed the hours of education required by Subsection (2)(a); or

736 (B) demonstrated competence as required under Subsection (2)(a).

737 ~~[(e)] (d) The division shall relicense a person who does not renew that person's license~~

738 ~~within one year as prescribed for an original application.~~

739 ~~[(f)] (e) Notwithstanding Subsection (2)(a), the division may extend the term of a~~

740 ~~license that would expire under Subsection (2)(a) except for the extension if:~~



741 (i) (A) the person complies with the requirements of this section to renew the license;  
742 and

743 (B) the renewal application remains pending at the time of the extension; or

744 (ii) at the time of the extension, there is pending a disciplinary action under this  
745 chapter.

746 ~~[(g)]~~ (f) Beginning January 1, 2020, each applicant for renewal or reinstatement of a  
747 license to practice as a sales agent, principal broker, or associate broker who is not already  
748 subject to ongoing monitoring of the individual's criminal history shall, at the time the  
749 application for renewal or reinstatement is filed:

750 (i) submit fingerprint cards in a form acceptable to the Department of Public Safety;

751 (ii) submit to the division a signed waiver in accordance with Subsection 53-10-108(4),  
752 acknowledging the registration of the applicant's fingerprints in the Federal Bureau of

753 Investigation Next Generation Identification System's Rap Back Service;

754 (iii) consent to a fingerprint background check by the Utah Bureau of Criminal  
755 Identification and the Federal Bureau of Investigation; and

756 (iv) pay the fee the division establishes in accordance with Subsection ~~[(1)(d)(vi)]~~  
757 (1)(d)(iv).

758 (3) (a) As a condition for the activation of an inactive license that was in an inactive  
759 status at the time of the licensee's most recent renewal, the licensee shall supply the division  
760 with proof of:

761 (i) successful completion of the respective sales agent or principal broker licensing  
762 examination within six months before the day on which the licensee applies to activate the  
763 license; or

764 (ii) the successful completion of the hours of continuing education that the licensee  
765 would have been required to complete under Subsection (2)(a) if the license had been on active  
766 status at the time of the licensee's most recent renewal.

767 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah  
768 Administrative Rulemaking Act, subject to concurrence by the division, establish by rule:

769 (i) the nature or type of continuing education required for reactivation of a license; and

770 (ii) how long before reactivation the continuing education must be completed.

771 Section 9. Section **61-2f-206** is amended to read:

772           **61-2f-206. Registration of person or branch office -- Certification of education**  
773 **providers and courses -- Specialized licenses.**

774           (1) (a) A person may not engage in an activity described in Section [61-2f-201](#), unless  
775 the person is registered with the division.

776           (b) To register with the division under this Subsection (1), a person shall submit to the  
777 division:

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

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

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

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

784           (c) The division may terminate a person's registration if:

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

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

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

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

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

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

795           (3) (a) In accordance with rules made by the commission with the concurrence of the  
796 division and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
797 the division shall certify:

798           (i) a real estate school;

799           (ii) a course provider; or

800           (iii) an instructor.

801           (b) In accordance with rules made by the commission in accordance with Title 63G,  
802 Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, the

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

804 (4) Except as provided under this chapter or by rule the commission makes in  
805 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a principal broker  
806 may not be responsible for more than one registered [person] entity at the same time.

807 (5) A principal broker:

808 (a) shall exercise active and reasonable supervision of the principal broker's main  
809 office in accordance with this chapter and rules the commission makes in accordance with Title  
810 63G, Chapter 3, Utah Administrative Rulemaking Act; and

811 (b) may supervise a branch office affiliated with the principal broker at the same time  
812 the principal broker exercises the supervision required under Subsection (5)(a).

813 (6) (a) A principal broker may designate a branch broker to supervise a branch office  
814 affiliated with the principal broker.

815 (b) A branch broker shall exercise active and reasonable supervision, in accordance  
816 with this chapter and rules the commission makes in accordance with Title 63G, Chapter 3,  
817 Utah Administrative Rulemaking Act, of each branch office the principal broker designates the  
818 branch broker to supervise.

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

823 (b) An individual may hold a specialized license in addition to a license as a principal  
824 broker, associate broker, or a sales agent.

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

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

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

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

834 (8) The commission may determine, by rule made in accordance with Title 63G,  
835 Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division,  
836 licensing requirements related to this section for a principal broker, associate broker, sales  
837 agent, dual broker, property management sales agent, or for a specialized license described in  
838 Subsection (7), including:

- 839 (a) prelicensing and postlicensing education requirements;
- 840 (b) examination requirements;
- 841 (c) affiliation with real estate brokerages or property management companies;
- 842 (d) property management sales agent:
  - 843 (i) designation procedures;
  - 844 (ii) allowable scope of practice; and
  - 845 (iii) division fees;
- 846 (e) what constitutes active and reasonable supervision for:
  - 847 (i) a principal broker when supervising a branch broker or sales agent; and
  - 848 (ii) a branch broker when supervising a sales agent; and
- 849 (f) other licensing procedures.

850 Section 10. Section **61-2f-207** is amended to read:

851 **61-2f-207. Change of information -- Failure to notify.**

852 (1) An applicant, licensee, registrant, or certificate holder shall send the division a  
853 signed statement in the form required by the division notifying the division within 10 business  
854 days of any change of:

- 855 (a) principal broker;
- 856 (b) principal business location;
- 857 (c) mailing address;
- 858 (d) home street address;
- 859 (e) an individual's name; or
- 860 (f) business name.

861 [~~2) The division may charge a fee established by the commission with the concurrence  
862 of the division in accordance with Section [63J-1-504](#) for processing any notification of change  
863 submitted by an applicant, licensee, registrant, or certificate holder.]~~

864 [(3)] (2) (a) When providing the division a business location or home street address, a

865 physical location or street address must be provided.

866 (b) When providing a mailing address, an applicant, licensee, registrant, or certificate  
867 holder may provide a post office box or other mail drop location.

868 [~~(4)~~] (3) Failure to notify the division of a change described in Subsection (1) is  
869 separate grounds for disciplinary action against an applicant, licensee, registrant, or certificate  
870 holder.

871 [~~(5)~~] (4) An applicant, licensee, registrant, or certificate holder is considered to have  
872 received any notification that has been sent to the last address furnished to the division by the  
873 applicant, licensee, registrant, or certificate holder.

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

875 **61-2f-401. Grounds for disciplinary action.**

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

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

879 (b) making an intentional misrepresentation;

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

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

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

885 (2) acting for more than one party in a transaction without the informed written consent  
886 of the parties;

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

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

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

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

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

896 or

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

899 (5) paying or offering to pay valuable consideration to a person not licensed under this  
900 chapter, except that valuable consideration may be shared:

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

902 (b) as provided under:

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

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

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

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

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

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

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

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

917 (b) the identification of real estate;

918 (c) the sale or rental price;

919 (d) money received in trust;

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

921 (f) any other information required by rule;

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

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

925 (a) be convicted of:

926 (i) a felony; or

- 927 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 928 (A) a class A misdemeanor;
- 929 (B) a class B misdemeanor; or
- 930 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 931 (b) plead guilty or nolo contendere to:
- 932 (i) a felony; or
- 933 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 934 (A) a class A misdemeanor;
- 935 (B) a class B misdemeanor; or
- 936 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 937 (c) enter into a plea in abeyance agreement in relation to:
- 938 (i) a felony; or
- 939 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 940 (A) a class A misdemeanor;
- 941 (B) a class B misdemeanor; or
- 942 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 943 (12) advertising the availability of real estate or the services of a licensee in a false,
- 944 misleading, or deceptive manner;
- 945 (13) in the case of a principal broker or a branch broker, failing to exercise active and
- 946 reasonable supervision, as the commission may define by rule made in accordance with Title
- 947 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the principal
- 948 broker's or branch broker's licensed or unlicensed staff;
- 949 (14) violating or disregarding:
- 950 (a) this chapter;
- 951 (b) an order of the commission; or
- 952 (c) the rules adopted by the commission and the division;
- 953 (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 954 estate transaction;
- 955 (16) any other conduct which constitutes dishonest dealing;
- 956 (17) having one of the following suspended, revoked, surrendered, or cancelled on the
- 957 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or

958 truthfulness:

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

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

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

964 (a) failing to respond to a subpoena;

965 (b) withholding evidence; or

966 (c) failing to produce documents or records;

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

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

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

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

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

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

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

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

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

984 (A) a government agency;

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

986 (C) a nonprofit or charitable institution; or

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

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



989 has a business relationship or financial interest;

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

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

992 (A) lender;

993 (B) loan servicer;

994 (C) attorney;

995 (D) credit counselor; or

996 (E) housing counselor;

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

999 (a) (i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated  
1000 independent contractor prepared; and

1001 (ii) is related to the business of:

1002 (A) the real estate brokerage; or

1003 (B) an associate broker, a branch broker, or a sales agent of the real estate brokerage; or

1004 (b) is related to the business administration of the real estate brokerage;

1005 (23) as a principal broker, placing a lien on real property, unless authorized by law;

1006 (24) as a sales agent or associate broker, placing a lien on real property for an unpaid  
1007 commission or other compensation related to real estate brokerage services; or

1008 (25) failing to timely disclose to a buyer or seller an affiliated business arrangement, as  
1009 defined in Section 31A-23a-1001, in accordance with the federal Real Estate Settlement  
1010 Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.

1011 Section 12. Section 61-2f-402 is amended to read:

1012 **61-2f-402. Investigations -- Disciplinary actions.**

1013 (1) The division may conduct a public or private investigation within or outside of this  
1014 state as the division considers necessary to determine whether a person has violated, is  
1015 violating, or is about to violate this chapter or any rule or order under this chapter.

1016 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms  
1017 under this chapter, the division may require or permit a person to file a statement in writing,  
1018 under oath or otherwise as to the facts and circumstances concerning the matter to be  
1019 investigated.

1020 (3) For the purpose of the investigation described in Subsection (1), the division or an  
1021 employee designated by the division may:

1022 (a) administer an oath or affirmation;

1023 (b) issue a subpoena that requires:

1024 (i) the attendance and testimony of a witness; or

1025 (ii) the production of evidence;

1026 (c) take evidence;

1027 (d) require the production of a book, paper, contract, record, other document, or

1028 information relevant to the investigation; and

1029 (e) serve a subpoena by certified mail.

1030 (4) (a) A court of competent jurisdiction shall enforce, according to the practice and  
1031 procedure of the court, a subpoena issued by the division.

1032 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee  
1033 required by the service statutes of the state where the witness or evidence is located.

1034 ~~[(5)(a) If a person is found to have violated this chapter or a rule made under this~~  
1035 ~~chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,~~  
1036 ~~document, or record required under this chapter, including the costs incurred to copy an~~  
1037 ~~electronic book, paper, contract, document, or record in a universally readable format.]~~

1038 ~~[(b) If a person fails to pay the costs described in Subsection (5)(a) when due, the~~  
1039 ~~person's license, certification, or registration is automatically suspended:]~~

1040 ~~[(i) beginning the day on which the payment of costs is due; and]~~

1041 ~~[(ii) ending the day on which the costs are paid.]~~

1042 ~~[(6)]~~ (5) (a) Except as provided in Subsections ~~[(6)]~~ (5)(b) and (c), the division shall  
1043 commence a disciplinary action under this chapter no later than the earlier of the following:

1044 (i) four years after the day on which the violation is reported to the division; or

1045 (ii) 10 years after the day on which the violation occurred.

1046 (b) Except as provided in Subsection ~~[(6)]~~ (5)(c), the division shall commence a  
1047 disciplinary action within four years after the day on which a violation occurred, if the violation  
1048 was of:

1049 (i) Section 61-2f-206;

1050 (ii) Subsection 61-2f-401(8), which prohibits failure to voluntarily furnish a copy of a

1051 document to the parties before and after the execution of a document; or  
1052 (iii) Subsection 61-2f-401(18), which prohibits failure to respond to a division request  
1053 in an investigation within 10 days after the day on which the request is served.  
1054 (c) The division may commence a disciplinary action under this chapter after the time  
1055 period described in Subsection [~~6~~] 5(a) or (b) expires if:  
1056 (i) (A) the disciplinary action is in response to a civil or criminal judgment or  
1057 settlement; and  
1058 (B) the division initiates the disciplinary action no later than one year after the day on  
1059 which the judgment is issued or the settlement is final; or  
1060 (ii) the division and the person subject to a disciplinary action enter into a written  
1061 stipulation to extend the time period described in Subsection [~~6~~] 5(a) or (b).