

HB0500S01 compared with HB0500

~~deleted text~~ shows text that was in HB0500 but was deleted in HB0500S01.

inserted text shows text that was not in HB0500 but was inserted into HB0500S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Calvin R. Musselman proposes the following substitute bill:

REAL ESTATE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {} Calvin R. Musselman

Senate Sponsor: { _____ } Kirk A. Cullimore

LONG TITLE

General Description:

This bill modifies the Real Estate Code and the Real Estate Licensing and Practices Act.

Highlighted Provisions:

This bill:

- ▶ removes the 10-day reporting requirement for criminal convictions;
- ▶ enhances penalties for violations involving vulnerable adults and adults over a certain age;
- ▶ modifies licensing fee maximums;
- ▶ requires the Department of Real Estate to provide notice of a disciplinary proceeding to the principal broker; and
- ▶ makes technical changes.

HB0500S01 compared with HB0500

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2c-102, as last amended by Laws of Utah 2020, Chapter 72

61-2c-402, as last amended by Laws of Utah 2022, Chapter 204

61-2f-102, as last amended by Laws of Utah 2017, Chapter 182

61-2f-301, as last amended by Laws of Utah 2012, Chapter 166

61-2f-401, as last amended by Laws of Utah 2023, Chapter 141

61-2f-404, as last amended by Laws of Utah 2016, Chapter 384

61-2g-306, as last amended by Laws of Utah 2012, Chapter 166

[63I-2-261, as last amended by Laws of Utah 2023, Chapter 33](#)

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

Section 1. Section **61-2c-102** is amended to read:

61-2c-102. Definitions.

(1) As used in this chapter:

(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

HB0500S01 compared with HB0500

(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:

(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

HB0500S01 compared with HB0500

(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 Utah-specific prelicensing 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 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 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

HB0500S01 compared with HB0500

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).

(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

HB0500S01 compared with HB0500

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 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.

HB0500S01 compared with HB0500

(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

(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.

HB0500S01 compared with HB0500

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

HB0500S01 compared with HB0500

(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

(1)(oo)(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.

(pp) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules made thereunder.

(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:

HB0500S01 compared with HB0500

(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.

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

(xx) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.

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

61-2c-402. Disciplinary action.

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

(a) (i) is a licensee or a person required to be licensed under this chapter; and

(ii) violates this chapter; or

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

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

(A) the provision of this chapter was in effect; and

(B) the person was registered or required to be registered under this chapter; or

(c) (i) is a certified education provider or person required to be certified to provide prelicensing or continuing education under this chapter; and

(ii) violates this chapter.

(2) The commission, with the concurrence of the director, may against a person described in Subsection (1):

(a) impose an educational requirement;

HB0500S01 compared with HB0500

(b) impose a civil penalty against the individual or entity in an amount not to exceed the greater of:

(i) except as provided in Subsection (2)(b)(ii), \$5,000 for each violation;

(ii) \$10,000 for each violation, if the person knew or should have known that the property owner was an individual 65 years old or older, or a vulnerable adult; or

~~(ii)~~ (iii) the amount equal to any gain or economic benefit derived from each violation;

(c) deny an application for an original license;

(d) do any of the following to a license under this chapter:

(i) suspend;

(ii) revoke;

(iii) place on probation;

(iv) reduce a lending manager license to a loan originator license;

(v) deny renewal;

(vi) deny reinstatement; or

(vii) in the case of a denial of a license or a suspension that extends to the expiration date of a license, set a waiting period for a person to apply for a license under this chapter;

(e) issue a cease and desist order;

(f) require the reimbursement of the division of costs incurred by the division related to the recovery, storage, or destruction of a record that the person disposes of in a manner that violates this chapter or a rule made under this chapter;

(g) modify a sanction described in Subsections (2)(a) through (f) if the commission finds that the person complies with court ordered restitution; or

(h) impose any combination of sanctions described in this Subsection (2).

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

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

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

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

HB0500S01 compared with HB0500

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

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

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

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

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

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

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

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

(c) The commission may delegate to the division the authority to ~~[make a decision on]~~ decide whether to convert a revocation.

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

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

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

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

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

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

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

(A) fraud;

(B) misrepresentation;

HB0500S01 compared with HB0500

- (C) deceit;
- (D) dishonesty;
- (E) breach of trust; or
- (F) money laundering.

(b) After receiving a written request a person makes in accordance with Subsection (5)(a), the commission may vacate the revocation of the person's license:

- (i) after a hearing; and
- (ii) with the concurrence of the division.

(c) A person whose license revocation is vacated in accordance with this Subsection (5) may apply for licensure in accordance with this chapter.

Section 3. Section **61-2f-102** is amended to read:

61-2f-102. Definitions.

As used in this chapter:

(1) "Associate broker" means an individual who is:

(a) employed or engaged as an independent contractor by or on behalf of a principal broker to perform an act described in Subsection (20) for valuable consideration; and

(b) licensed under this chapter as an associate broker.

(2) "Branch broker" means an associate broker who manages a principal broker's branch office under the supervision of the principal broker.

(3) "Branch office" means a principal broker's real estate brokerage office that is not the principal broker's main office.

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

- (a) a Saturday;
- (b) a Sunday; or
- (c) a federal or state holiday.

(5) "Business opportunity" means the sale, lease, or exchange of any business that includes an interest in real estate.

(6) "Commission" means the Real Estate Commission established under this chapter.

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

(8) "Condominium homeowners' association" means the condominium unit owners

HB0500S01 compared with HB0500

acting as a group in accordance with declarations and bylaws.

(9) (a) "Condominium hotel" means one or more condominium units that are operated as a hotel.

(b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of which are owned by a single entity.

(10) "Condominium unit" means the same as that term is defined in Section 57-8-3.

(11) "Director" means the director of the Division of Real Estate.

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

(13) "Dual broker" means a principal broker of a real estate sales brokerage who obtains from the division a dual broker license in order to function as the principal broker of a property management company that is a separate entity from the real estate sales brokerage.

(14) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) a company;

(e) an association;

(f) a joint venture;

(g) a business trust;

(h) a trust; or

(i) any organization similar to an entity described in Subsections (14)(a) through (h).

(15) "Executive director" means the director of the Department of Commerce.

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

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

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

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

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

(i) solicit, or offer that the other person will engage in an act described in Subsection (16)(a); or

(ii) negotiate terms in relationship to an act described in Subsection (16)(a).

HB0500S01 compared with HB0500

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

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

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

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

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

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

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

(E) an addition of collateral;

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

(G) an addition of a cosigner; or

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

(ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

or

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

(i) solicit, or offer that the other person will engage in an act described in Subsection (17)(a); or

(ii) negotiate terms in relationship to an act described in Subsection (17)(a).

(18) "Main office" means the address which a principal broker designates with the division as the principal broker's primary brokerage office.

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

(20) "Principal broker" means an individual who is licensed or required to be licensed as a principal broker under this chapter who:

(a) sells or lists for sale real estate, including real estate being sold as part of a foreclosure rescue, or a business opportunity with the expectation of receiving valuable consideration;

(b) buys, exchanges, or auctions real estate, an option on real estate, a business opportunity, or an improvement on real estate with the expectation of receiving valuable consideration;

(c) advertises, offers, attempts, or otherwise holds the individual out to be engaged in

HB0500S01 compared with HB0500

the business described in Subsection (20)(a) or (b);

(d) is employed by or on behalf of the owner of real estate or by a prospective purchaser of real estate and performs an act described in Subsection (20)(a), whether the individual's compensation is at a stated salary, a commission basis, upon a salary and commission basis, or otherwise;

(e) with the expectation of receiving valuable consideration, manages property owned by another person;

(f) advertises or otherwise holds the individual out to be engaged in property management;

(g) with the expectation of receiving valuable consideration, assists or directs in the procurement of prospects for or the negotiation of a transaction listed in Subsections (20)(a) and (e);

(h) except for a mortgage lender, title insurance producer, or an employee of a mortgage lender or title insurance producer, assists or directs in the closing of a real estate transaction with the expectation of receiving valuable consideration;

(i) engages in foreclosure rescue; or

(j) advertises, offers, attempts, or otherwise holds the person out as being engaged in foreclosure rescue.

(21) (a) "Property management" means engaging in, with the expectation of receiving valuable consideration, the management of real estate owned by another person or advertising or otherwise claiming to be engaged in property management by:

(i) advertising for, arranging, negotiating, offering, or otherwise attempting or participating in a transaction calculated to secure the rental or leasing of real estate;

(ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real estate and accounting for and disbursing the money collected; or

(iii) authorizing expenditures for repairs to the real estate.

(b) "Property management" does not include:

(i) hotel or motel management;

(ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for a period of less than 30 consecutive days, and the

HB0500S01 compared with HB0500

management activities associated with these rentals; or

(iii) the leasing or management of surface or subsurface minerals or oil and gas interests, if the leasing or management is separate from a sale or lease of the surface estate.

(22) "Property management sales agent" means a sales agent who:

(a) is affiliated with a dual broker through the dual broker's property management company; and

(b) is designated by the dual broker as a property management sales agent.

(23) "Real estate" includes leaseholds and business opportunities involving real property.

(24) (a) "Regular salaried employee" means an individual who performs a service for wages or other remuneration, whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied.

(b) "Regular salaried employee" does not include an individual who performs services on a project-by-project basis or on a commission basis.

(25) "Reinstatement" means restoring a license that has expired or has been suspended.

(26) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.

(27) "Renewal" means extending a license for an additional licensing period on or before the date the license expires.

(28) "Sales agent" means an individual who is:

(a) affiliated with a principal broker, either as an independent contractor or an employee as provided in Section 61-2f-303, to perform for valuable consideration an act described in Subsection (20); and

(b) licensed under this chapter as a sales agent.

(29) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.

Section 4. Section **61-2f-301** is amended to read:

61-2f-301. Reporting requirements.

(1) A licensee shall notify the division of the following by sending the division a signed statement within 10 business days ~~[of]~~ after the day on which:

~~[(a) a conviction of, or the entry of a plea in abeyance to:]~~

~~[(i) a felony; or]~~

HB0500S01 compared with HB0500

~~[(ii) a misdemeanor involving financial services or a financial services-related business, fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion;]~~

~~[(b) the potential resolution of a felony or of a misdemeanor described in Subsection (1)(a)(ii) by:]~~

~~[(i) a diversion agreement; or]~~

~~[(ii) another agreement under which a criminal charge is held in suspense for a period of time;]~~

~~[(c)] (a) [the filing of] a personal or brokerage bankruptcy is filed, if the licensee is a principal broker;~~

~~[(d)] (b) [the suspension, revocation, surrender, cancellation, or denial of] a license or registration of the licensee that is necessary to engage in an occupation or profession is suspended, revoked, surrendered, canceled, or denied, regardless of whether the license or registration is issued by this state or another jurisdiction; or~~

~~[(e)] (c) [the entry of] a cease and desist order or a temporary or permanent injunction is issued:~~

~~(i) against the licensee by a court or administrative agency; and~~

~~(ii) on the basis of:~~

~~(A) conduct or a practice involving the business of real estate; or~~

~~(B) conduct involving fraud, misrepresentation, or deceit.~~

~~(2) The commission, with the concurrence of the director, shall enforce the reporting requirement under this section pursuant to Section 61-2f-404.~~

Section 5. 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:

(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

HB0500S01 compared with HB0500

- (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 written 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 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 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;

HB0500S01 compared with HB0500

(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) 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;
 - (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;

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

HB0500S01 compared with HB0500

(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;

(14) violating or disregarding:

(a) this chapter;

(b) an order of the commission; or

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

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

(16) any other conduct which constitutes dishonest dealing;

(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:

(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;

(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;

(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);

(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;

(21) violating Title 57, Chapter 30, Residential Property Service Agreements;

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

HB0500S01 compared with HB0500

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;

(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;

(23) 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;

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

HB0500S01 compared with HB0500

(25) 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

(26) 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 6. Section **61-2f-404** is amended to read:

61-2f-404. Disciplinary action -- Judicial review.

(1) (a) On the basis of a violation of this chapter, the commission with the concurrence of the director, may issue an order:

(i) imposing an educational requirement;

(ii) imposing a civil penalty not to exceed the greater of:

(A) except as provided in Subsection (1)(a)(ii)(B), \$5,000 for each violation; [or]

(B) \$10,000 for each violation, if the person knew or should have known that the property owner was an individual 65 years old or older, or a vulnerable adult; or

~~[(B)]~~ (C) the amount of any gain or economic benefit derived from each violation;

(iii) taking any of the following actions related to a license, registration, or certificate:

(A) revoking;

(B) suspending;

(C) placing on probation;

(D) denying the renewal, reinstatement, or application for an original license, registration, or certificate; or

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

(iv) issuing a cease and desist order;

(v) modifying an action described in Subsections (1)(a)(i) through (iv) if the commission finds that the person complies with court ordered restitution; or

(vi) doing any combination of Subsections (1)(a)(i) through (v).

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

HB0500S01 compared with HB0500

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

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

(I) beginning 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, with the concurrence of the commission, 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.

(c) ~~[If a licensee is an active sales agent or active associate broker, the]~~ In a manner determined by the division, the division shall inform [the] a principal broker:

(i) with whom [the] a licensee is affiliated of;

(A) [the charge] a complaint made to the division against the licensee that requires a written response from the licensee;

(B) a violation alleged against the licensee by the division;

(C) [and of] the time and place of any disciplinary hearing~~[-]~~ regarding the licensee;

and

(D) the resolution of a violation alleged described in Subsection (1)(c)(i)(B); and

(ii) upon inquiry from a principal broker regarding an affiliated licensee:~~{f.}~~

(A) disciplinary actions made by the division against the licensee for the past five years; and

(B) the resolution of the disciplinary actions described in Subsection (1)(c)(ii)(A).

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

(2) (a) An applicant, certificate holder, licensee, registrant, or person aggrieved, including the complainant, may obtain agency review by the executive director and judicial review of any adverse ruling, order, or decision of the division.

(b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court

HB0500S01 compared with HB0500

may award reasonable litigation expenses to the applicant, certificate holder, registrant, or licensee as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

(c) (i) An order, ruling, or decision of the division shall take effect and become operative 30 days after the service of the order, ruling, or decision unless otherwise provided in the order.

(ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division may stay enforcement of an order, ruling, or decision in accordance with Section 63G-4-405.

(iii) An appeal is governed by the Utah Rules of Appellate Procedure.

(3) The commission and the director shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.

Section 7. Section **61-2g-306** is amended to read:

61-2g-306. Renewal of license, certification, or registration.

(1) To renew a license, certification, or registration, before the license, certification, or registration expires, the holder of the license, certification, or registration shall submit to the division in compliance with procedures set through the concurrence of the division and the board:

(a) an application for renewal;

(b) a fee established by the division and the board, in accordance with Section 63J-1-504; and

(c) evidence in the form prescribed by the division of having completed the continuing education requirements for renewal specified in this chapter.

(2) (a) A license, certification, or registration expires if it is not renewed on or before its expiration date.

(b) For a period of 30 days after the expiration date, a license, certification, or registration may be reinstated upon:

(i) payment of a renewal fee and a late fee determined through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section 61-2g-307.

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

HB0500S01 compared with HB0500

the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section 61-2g-307.

(d) After the six-month period described in Subsection (2)(c), and until one year after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined through the concurrence of the division and the board in accordance with Section 63J-1-504;

(ii) providing proof acceptable to the division, with the concurrence of the board, of the person having satisfied the continuing education requirements of Section 61-2g-307; and

(iii) providing proof acceptable to the division, with the concurrence of the board, of the person completing 24 hours of continuing education:

(A) in addition to the requirements in Section 61-2g-307; and

(B) on a subject determined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(e) The division shall relicense, recertify, or reregister a person who does not renew that person's license, certification, or registration within one year after the expiration date as prescribed for an original application.

(f) Notwithstanding Subsection (2)(a), the division may extend the term of a license, certification, or registration that would expire under Subsection (2)(a) except for the extension if:

(i) (A) the person complies with the requirements of this section to renew the license, certification, or registration; and

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

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

(3) A person who is licensed, certified, or registered under this chapter shall notify the division of the following by sending the division a signed statement within 10 business days

~~[of] after the day on which:~~

~~[(a) a conviction of, or the entry of a plea in abeyance to:]~~

~~[(i) a felony, or]~~

HB0500S01 compared with HB0500

~~[(ii) a misdemeanor involving financial services or a financial services-related business, fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion;]~~

~~[(b) the potential resolution of a felony or of a misdemeanor described in Subsection (3)(a)(ii) by:]~~

~~[(i) a diversion agreement; or]~~

~~[(ii) any other agreement under which a criminal charge is suspended for a period of time;]~~

~~[(c)] (a) the [suspension, revocation, surrender, cancellation, or denial of a] person's professional license, certification, or registration [of the person,] is suspended, revoked, surrendered, canceled, or denied, regardless of whether the license, certification, or registration is issued by this state or another jurisdiction; or~~

~~[(d)] (b) [the entry of] a cease and desist order or a temporary or permanent injunction is entered:~~

~~(i) against the person by a court or administrative agency; and~~

~~(ii) on the basis of:~~

~~(A) conduct or a practice involving an act regulated by this chapter; or~~

~~(B) conduct involving fraud, misrepresentation, or deceit.~~

~~(4) The board, with the concurrence of the division, shall enforce the reporting requirement of Subsection (3) pursuant to Section 61-2g-502.~~

Section 8. Section 63I-2-261 is amended to read:

63I-2-261. Repeal dates: Title 61.

[Section 61-2-204 is repealed on July 1, 2024].

Section ~~8~~9. **Effective date.**

This bill takes effect on May 1, 2024.