

**DIVISION OF REAL ESTATE AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to the Division of Real Estates' regulation of the appraisal, mortgage, and real estate industries.

**Highlighted Provisions:**

This bill:

- ▶ recodifies Title 61, Chapter 2, Division of Real Estate, and Chapter 2a, Real Estate Recovery Fund Act, and as part of the recodification creates Chapter 2f, Real Estate Licensing and Practices Act;
- ▶ addresses definitions and consistency of terminology;
- ▶ addresses powers under appraisal, mortgage, and real estate statutes, including:
  - providing for the suspension of a license, registration, or certification for payment of a fee with a dishonored instrument;
  - addressing investigatory powers and costs;
  - addressing the division providing lists of licensee, registrants, and certificate holders;
  - addressing the effect of a failure to accurately disclose a criminal history; and
  - requiring deadlines for compliance with disciplinary actions;
- ▶ increases certain fines;
- ▶ clarifies procedures related to the renewal of a registration as a trainee under appraisal statutes;



- 28           ▶ modifies the powers of the Real Estate Appraiser Licensing and Certification Board
- 29 with regard to examinations and education;
- 30           ▶ modifies requirements for licensing and certification under appraisal statutes;
- 31           ▶ corrects references to trainees under appraisal statutes;
- 32           ▶ addresses ability of persons licensed, certified, or registered under appraisal statutes
- 33 to operate as a professional corporation or limited liability company;
- 34           ▶ requires that an individual licensed under mortgage statutes be sponsored by a
- 35 licensed entity;
- 36           ▶ addresses education and examination requirements under mortgage statutes that are
- 37 specific to obtaining a license in Utah;
- 38           ▶ addresses the process and requirements to obtain a license, renew a license, or notify
- 39 the division of changes in certain information;
- 40           ▶ provides for certain past revocations of a license under mortgage statutes to be
- 41 converted to a suspension of the license;
- 42           ▶ modifies criminal penalties;
- 43           ▶ clarifies procedures for making claims against the mortgage recovery funds and real
- 44 estate; and
- 45           ▶ makes technical and conforming amendments.

46 **Monies Appropriated in this Bill:**

47           None

48 **Other Special Clauses:**

49           None

50 **Utah Code Sections Affected:**

51 AMENDS:

- 52           **10-3-1110**, as last amended by Laws of Utah 2008, Chapter 169
- 53           **13-25a-111**, as last amended by Laws of Utah 2005, Chapter 18
- 54           **16-11-2**, as last amended by Laws of Utah 2009, Chapter 220
- 55           **17-50-106**, as enacted by Laws of Utah 2008, Chapter 169
- 56           **31A-2-402**, as last amended by Laws of Utah 2009, Chapter 372
- 57           **34-44-102**, as enacted by Laws of Utah 2007, Chapter 65
- 58           **34A-2-104**, as last amended by Laws of Utah 2009, Chapter 185

- 59           **41-1a-422**, as last amended by Laws of Utah 2009, Chapters 183, 348, and 380
- 60           **48-2c-1502**, as last amended by Laws of Utah 2009, Chapter 141
- 61           **57-11-2**, as last amended by Laws of Utah 2009, Chapter 352
- 62           **57-11-14**, as last amended by Laws of Utah 2009, Chapter 352
- 63           **57-19-14**, as last amended by Laws of Utah 1990, Chapter 199
- 64           **57-21-2**, as last amended by Laws of Utah 2008, Chapter 382
- 65           **57-23-5**, as enacted by Laws of Utah 1991, Chapter 262
- 66           **57-27-102**, as enacted by Laws of Utah 2009, Chapter 194
- 67           **58-56-16**, as last amended by Laws of Utah 2009, Chapter 183
- 68           **61-1-13**, as last amended by Laws of Utah 2009, Chapters 351 and 355
- 69           **61-2b-2**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 70           **61-2b-3**, as last amended by Laws of Utah 2005, Chapter 199
- 71           **61-2b-6**, as last amended by Laws of Utah 2009, Chapters 183 and 352
- 72           **61-2b-8**, as last amended by Laws of Utah 2009, Chapter 352
- 73           **61-2b-10**, as last amended by Laws of Utah 2005, Chapter 199
- 74           **61-2b-14**, as last amended by Laws of Utah 2005, Chapter 199
- 75           **61-2b-15**, as last amended by Laws of Utah 2005, Chapter 199
- 76           **61-2b-17**, as last amended by Laws of Utah 2007, Chapter 325
- 77           **61-2b-18**, as last amended by Laws of Utah 2009, Chapter 183
- 78           **61-2b-19**, as last amended by Laws of Utah 2005, Chapter 199
- 79           **61-2b-20**, as last amended by Laws of Utah 2009, Chapter 352
- 80           **61-2b-25**, as last amended by Laws of Utah 2008, Chapter 387
- 81           **61-2b-28**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 82           **61-2b-29**, as last amended by Laws of Utah 2009, Chapter 352
- 83           **61-2b-30.5**, as last amended by Laws of Utah 2008, Chapter 387
- 84           **61-2b-32**, as last amended by Laws of Utah 1999, Chapter 117
- 85           **61-2b-33**, as last amended by Laws of Utah 2009, Chapter 352
- 86           **61-2b-36**, as last amended by Laws of Utah 2005, Chapter 199
- 87           **61-2b-39**, as last amended by Laws of Utah 2005, Chapter 199
- 88           **61-2b-40**, as last amended by Laws of Utah 2005, Chapter 199
- 89           **61-2c-102**, as last amended by Laws of Utah 2009, Chapter 372

- 90           **61-2c-103**, as last amended by Laws of Utah 2009, Chapters 183, 352, and 372
- 91           **61-2c-104**, as last amended by Laws of Utah 2009, Chapters 352 and 372
- 92           **61-2c-105**, as last amended by Laws of Utah 2009, Chapter 372
- 93           **61-2c-106**, as last amended by Laws of Utah 2009, Chapter 372
- 94           **61-2c-201**, as last amended by Laws of Utah 2009, Chapters 183 and 372
- 95           **61-2c-202**, as last amended by Laws of Utah 2009, Chapters 183 and 372
- 96           **61-2c-203**, as last amended by Laws of Utah 2009, Chapter 372
- 97           **61-2c-204.1**, as enacted by Laws of Utah 2009, Chapter 372
- 98           **61-2c-205**, as last amended by Laws of Utah 2009, Chapters 183, 352, and 372
- 99           **61-2c-205.1**, as enacted by Laws of Utah 2009, Chapter 372
- 100          **61-2c-206**, as last amended by Laws of Utah 2009, Chapters 183 and 372
- 101          **61-2c-301**, as last amended by Laws of Utah 2009, Chapters 72 and 372
- 102          **61-2c-302**, as last amended by Laws of Utah 2009, Chapter 372
- 103          **61-2c-401**, as last amended by Laws of Utah 2007, Chapter 325
- 104          **61-2c-402**, as last amended by Laws of Utah 2009, Chapters 352 and 372
- 105          **61-2c-404**, as last amended by Laws of Utah 2007, Chapter 325
- 106          **61-2c-501**, as last amended by Laws of Utah 2009, Chapter 352
- 107          **61-2c-502**, as last amended by Laws of Utah 2009, Chapters 352 and 372
- 108          **61-2c-503**, as last amended by Laws of Utah 2009, Chapter 352
- 109          **61-2c-505**, as enacted by Laws of Utah 2004, Chapter 297
- 110          **61-2c-507**, as last amended by Laws of Utah 2009, Chapter 372
- 111          **63G-2-302**, as last amended by Laws of Utah 2009, Chapters 126, 349, and 379
- 112          **63J-1-602**, as enacted by Laws of Utah 2009, Chapter 368
- 113          **70D-3-102**, as enacted by Laws of Utah 2009, Chapter 72
- 114          **72-5-116**, as last amended by Laws of Utah 2008, Chapter 169

115 ENACTS:

- 116           **61-2-101**, Utah Code Annotated 1953
- 117           **61-2-102**, Utah Code Annotated 1953
- 118           **61-2-202**, Utah Code Annotated 1953
- 119           **61-2c-209**, Utah Code Annotated 1953
- 120           **61-2c-501.5**, Utah Code Annotated 1953

121           **61-2f-101**, Utah Code Annotated 1953

122           **61-2f-105**, Utah Code Annotated 1953

123           **61-2f-206**, Utah Code Annotated 1953

124           **61-2f-305**, Utah Code Annotated 1953

125 RENUMBERS AND AMENDS:

126           **61-2-201**, (Renumbered from 61-2-5, as last amended by Laws of Utah 2009, Chapters  
127 269 and 372)

128           **61-2-203**, (Renumbered from 61-2-5.1, as last amended by Laws of Utah 2008, Chapter  
129 382)

130           **61-2-204**, (Renumbered from 61-2-28, as last amended by Laws of Utah 2008, Chapters  
131 216 and 382)

132           **61-2f-102**, (Renumbered from 61-2-2, as last amended by Laws of Utah 2005, Chapter  
133 257)

134           **61-2f-103**, (Renumbered from 61-2-5.5, as last amended by Laws of Utah 2008,  
135 Chapter 387)

136           **61-2f-104**, (Renumbered from 61-2-14, as last amended by Laws of Utah 1983, Chapter  
137 257)

138           **61-2f-106**, (Renumbered from 61-2-22, as last amended by Laws of Utah 1985, Chapter  
139 162)

140           **61-2f-201**, (Renumbered from 61-2-1, as last amended by Laws of Utah 1996, Chapter  
141 102)

142           **61-2f-202**, (Renumbered from 61-2-3, as last amended by Laws of Utah 2009, Chapter  
143 356)

144           **61-2f-203**, (Renumbered from 61-2-6, as last amended by Laws of Utah 2009, Chapter  
145 352)

146           **61-2f-204**, (Renumbered from 61-2-9, as last amended by Laws of Utah 2009, Chapters  
147 183 and 352)

148           **61-2f-205**, (Renumbered from 61-2-7, as last amended by Laws of Utah 1991, Chapter  
149 165)

150           **61-2f-207**, (Renumbered from 61-2-7.1, as last amended by Laws of Utah 2009,  
151 Chapter 183)

- 152           **61-2f-301**, (Renumbered from 61-2-7.2, as last amended by Laws of Utah 2009,  
153 Chapter 352)
- 154           **61-2f-302**, (Renumbered from 61-2-10, as last amended by Laws of Utah 2009, Chapter  
155 352)
- 156           **61-2f-303**, (Renumbered from 61-2-25, as enacted by Laws of Utah 2003, Chapter 264)
- 157           **61-2f-304**, (Renumbered from 61-2-8, as last amended by Laws of Utah 2000, Chapter  
158 86)
- 159           **61-2f-306**, (Renumbered from 61-2-20, as last amended by Laws of Utah 2008, Chapter  
160 387)
- 161           **61-2f-307**, (Renumbered from 61-2-26, as last amended by Laws of Utah 2008, Chapter  
162 382)
- 163           **61-2f-308**, (Renumbered from 61-2-27, as enacted by Laws of Utah 2005, Chapter 252)
- 164           **61-2f-401**, (Renumbered from 61-2-11, as last amended by Laws of Utah 2009, Chapter  
165 352)
- 166           **61-2f-402**, (Renumbered from 61-2-11.5, as last amended by Laws of Utah 2007,  
167 Chapter 325)
- 168           **61-2f-403**, (Renumbered from 61-2-24, as enacted by Laws of Utah 1996, Chapter 102)
- 169           **61-2f-404**, (Renumbered from 61-2-12, as last amended by Laws of Utah 2009, Chapter  
170 352)
- 171           **61-2f-405**, (Renumbered from 61-2-17, as last amended by Laws of Utah 2009, Chapter  
172 352)
- 173           **61-2f-406**, (Renumbered from 61-2-13, as last amended by Laws of Utah 2008, Chapter  
174 387)
- 175           **61-2f-407**, (Renumbered from 61-2-21, as last amended by Laws of Utah 2008,  
176 Chapters 370, 382, and 387)
- 177           **61-2f-408**, (Renumbered from 61-2-13.5, as enacted by Laws of Utah 1997, Chapter  
178 232)
- 179           **61-2f-409**, (Renumbered from 61-2-18, as last amended by Laws of Utah 1985, Chapter  
180 162)
- 181           **61-2f-501**, (Renumbered from 61-2a-1, as enacted by Laws of Utah 1975, Chapter 172)
- 182           **61-2f-502**, (Renumbered from 61-2a-2, as last amended by Laws of Utah 2009, Chapter

183 352)  
184 **61-2f-503**, (Renumbered from 61-2a-3, as last amended by Laws of Utah 2009, Chapter  
185 352)

186 **61-2f-504**, (Renumbered from 61-2a-12, as last amended by Laws of Utah 2009,  
187 Chapter 352)

188 **61-2f-505**, (Renumbered from 61-2a-4, as last amended by Laws of Utah 2009, Chapter  
189 352)

190 **61-2f-506**, (Renumbered from 61-2a-5, as last amended by Laws of Utah 2009, Chapter  
191 352)

192 **61-2f-507**, (Renumbered from 61-2a-6, as last amended by Laws of Utah 2009, Chapter  
193 352)

194 **61-2f-508**, (Renumbered from 61-2a-7, as last amended by Laws of Utah 2009, Chapter  
195 352)

196 **61-2f-509**, (Renumbered from 61-2a-8, as last amended by Laws of Utah 1983, Chapter  
197 256)

198 **61-2f-510**, (Renumbered from 61-2a-9, as last amended by Laws of Utah 2009, Chapter  
199 352)

200 **61-2f-511**, (Renumbered from 61-2a-11, as last amended by Laws of Utah 2009,  
201 Chapter 352)

202 **61-2f-512**, (Renumbered from 61-2a-10, as last amended by Laws of Utah 1983,  
203 Chapter 256)

204 REPEALS:

205 **61-2-4**, as last amended by Laws of Utah 1996, Chapter 102

206 **61-2b-11**, as last amended by Laws of Utah 1999, Chapter 117

207 **61-2b-16**, as last amended by Laws of Utah 1999, Chapter 117

208 **61-2c-207**, as last amended by Laws of Utah 2009, Chapter 372

209 **61-2c-208**, as last amended by Laws of Utah 2009, Chapters 183 and 372



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

212 Section 1. Section **10-3-1110** is amended to read:

213 **10-3-1110. Exemption from state licensure by Division of Real Estate.**

214 In accordance with Section [~~61-2-3~~] 61-2f-202, an employee of a municipality is  
215 exempt from licensure under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate  
216 Licensing and Practices Act:

- 217 (1) when engaging in an act on behalf of the municipality in accordance with:
- 218 (a) this title; or
- 219 (b) Title 11, Cities, Counties, and Local Taxing Units; and
- 220 (2) if the act described in Subsection (1) is related to one or more of the following:
- 221 (a) acquiring real [~~property~~] estate, including by eminent domain;
- 222 (b) disposing of real [~~property~~] estate;
- 223 (c) providing services that constitute property management, as defined in Section
- 224 [~~61-2-2~~] 61-2f-102; or
- 225 (d) leasing real [~~property~~] estate.

226 Section 2. Section **13-25a-111** is amended to read:

227 **13-25a-111. Exemptions.**

228 Notwithstanding any other provision of this chapter, Sections 13-25a-103 and  
229 13-25a-108 do not apply to:

- 230 (1) a telephone call made for a charitable purpose as defined in Section 13-22-2;
- 231 (2) a charitable solicitation as defined in Section 13-22-2; or
- 232 (3) a person who holds a license or registration:
- 233 (a) under Title 31A, Insurance Code;
- 234 (b) issued by the Division of Real Estate established in Section [~~61-2-5~~] 61-2-201; or
- 235 (c) issued by the National Association of Securities Dealers.

236 Section 3. Section **16-11-2** is amended to read:

237 **16-11-2. Definitions.**

238 As used in this chapter:

- 239 (1) "Filed" means the division has received and approved, as to form, a document
- 240 submitted under the provisions of this chapter, and has marked on the face of the document a
- 241 stamp or seal indicating the time of day and date of approval, the name of the division, the
- 242 division director's signature and division seal, or facsimiles of the signature or seal.
- 243 (2) "Professional corporation" means a corporation organized under this chapter.
- 244 (3) "Professional service" means the personal service rendered by:



245 (a) a physician, surgeon, or doctor of medicine holding a license under Title 58,  
246 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of  
247 medicine;

248 (b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and  
249 Dental Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;

250 (c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,  
251 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of  
252 osteopathy;

253 (d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician  
254 Practice Act, and any subsequent laws regulating the practice of chiropractic;

255 (e) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric  
256 Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

257 (f) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry  
258 Practice Act, and any subsequent laws regulating the practice of optometry;

259 (g) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act,  
260 and any subsequent laws regulating the practice of veterinary medicine;

261 (h) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act,  
262 and any subsequent laws regulating the practice of architecture;

263 (i) a public accountant holding a license under Title 58, Chapter 26a, Certified Public  
264 Accountant Licensing Act, and any subsequent laws regulating the practice of public  
265 accounting;

266 (j) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician  
267 Practice Act, and any subsequent laws regulating the practice of naturopathy;

268 (k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act,  
269 and any subsequent laws regulating the practice of pharmacy;

270 (l) an attorney granted the authority to practice law by:

271 (i) the Utah Supreme Court; or

272 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that  
273 licenses or regulates the authority to practice law in any state or territory of the United States  
274 other than Utah;

275 (m) a professional engineer registered under Title 58, Chapter 22, Professional

276 Engineers and Professional Land Surveyors Licensing Act;

277 (n) a [~~real estate broker or real estate~~] principal broker, associate broker, or sales agent  
 278 holding a license under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate Licensing  
 279 and Practices Act, and any subsequent laws regulating the selling, exchanging, purchasing,  
 280 renting, or leasing of real estate;

281 (o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing  
 282 Act, and any subsequent laws regulating the practice of psychology;

283 (p) a clinical or certified social worker holding a license under Title 58, Chapter 60,  
 284 Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social  
 285 work;

286 (q) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy  
 287 Practice Act, and any subsequent laws regulating the practice of physical therapy;

288 (r) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,  
 289 Chapter 44a, Nurse Midwife Practice Act; [~~or~~]

290 (s) a landscape architect licensed under Title 58, Chapter 53, Landscape Architects  
 291 Licensing Act, and any subsequent laws regulating landscape architects[-]; or

292 (t) an individual licensed, certified, or registered under Title 61, Chapter 2b, Real  
 293 Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the  
 294 practice of appraising real estate.

295 (4) "Regulating board" means the board that is charged with the licensing and  
 296 regulation of the practice of the profession which the professional corporation is organized to  
 297 render. The definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act,  
 298 apply to this chapter unless the context clearly indicates that a different meaning is intended.

299 Section 4. Section **17-50-106** is amended to read:

300 **17-50-106. Exemption from state licensure by Division of Real Estate.**

301 In accordance with Section [~~61-2-3~~] 61-2f-202, an employee of a county is exempt from  
 302 licensure under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate Licensing and  
 303 Practices Act:

304 (1) when engaging in an act on behalf of the county in accordance with:

305 (a) this title; or

306 (b) Title 11, Cities, Counties, and Local Taxing Units; and

307 (2) if the act described in Subsection (1) is related to one or more of the following:

308 (a) acquiring real [~~property~~] estate, including by eminent domain;

309 (b) disposing of real [~~property~~] estate;

310 (c) providing services that constitute property management, as defined in Section

311 [~~61-2-2~~] 61-2f-102; or

312 (d) leasing real [~~property~~] estate.

313 Section 5. Section **31A-2-402** is amended to read:

314 **31A-2-402. Definitions.**

315 As used in this part:

316 (1) "Commission" means the Title and Escrow Commission created in Section

317 31A-2-403.

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

320 (3) "Dual licensed title licensee" means a title licensee who holds:

321 (a) a producer license as a title licensee; and

322 (b) a license or certificate under:

323 (i) Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate Licensing and  
324 Practices Act;

325 (ii) Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act; or

326 (iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.

327 (4) "Real Estate Commission" means the Real Estate Commission created in Section

328 [~~61-2-5.5~~] 61-2f-103.

329 (5) "Title licensee" means a person licensed under this title as:

330 (a) an agency with a title insurance line of authority;

331 (b) a producer with:

332 (i) a general title insurance line of authority; or

333 (ii) a specific category of authority for title insurance; or

334 (c) a title insurance adjuster.

335 Section 6. Section **34-44-102** is amended to read:

336 **34-44-102. Definitions.**

337 As used in this chapter:

- 338 (1) "Business relationship" means an agreement that governs the relationship of  
339 principal and sales representative.
- 340 (2) "Commission" means:
- 341 (a) compensation:
- 342 (i) that accrues to a sales representative;
- 343 (ii) for payment by a principal; and
- 344 (iii) at a rate expressed as a percentage of the dollar amount of sales, orders, or profits;
- 345 or
- 346 (b) any other method of compensation agreed to between a sales representative and a  
347 principal including:
- 348 (i) fees for services; and
- 349 (ii) a retainer.
- 350 (3) "Principal" means a person who:
- 351 (a) engages in any of the following activities with regard to a product or service:
- 352 (i) manufactures;
- 353 (ii) produces;
- 354 (iii) imports;
- 355 (iv) sells; or
- 356 (v) distributes;
- 357 (b) establishes a business relationship with a sales representative to solicit orders for a  
358 product or a service described in Subsection (3)(a); and
- 359 (c) agrees to compensate a sales representative, in whole or in part, by commission.
- 360 (4) (a) Except as provided in Subsection (4)(b), "sales representative" means a person  
361 who enters into a business relationship with a principal:
- 362 (i) to solicit orders for a product or a service described in Subsection (3)(a); and
- 363 (ii) under which the person is compensated, in whole or in part, by commission.
- 364 (b) "Sales representative" does not include:
- 365 (i) an employee of a principal;
- 366 (ii) a person licensed under Title 31A, Insurance Code;
- 367 (iii) a person licensed under Title 41, Chapter 3, Part 2, Licensing;
- 368 (iv) a person licensed under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real

369 Estate Licensing and Practices Act;

370 (v) a person who provides a product or service under a business relationship with a  
371 principal that is incident to the purchase or sale of real property; or

372 (vi) a person who places an order or purchases a product or service for that person's  
373 own account for resale.

374 (5) "Terminates" or "termination" means the end of a business relationship between a  
375 sales representative and a principal, whether by:

376 (a) agreement;

377 (b) expiration of a time period; or

378 (c) exercise of a right of termination by either the principal or the sales representative.

379 Section 7. Section **34A-2-104** is amended to read:

380 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**

381 **circumstances -- Exemptions.**

382 (1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee,"  
383 "worker," and "operative" mean:

384 (a) (i) an elective or appointive officer and any other person:

385 (A) in the service of:

386 (I) the state;

387 (II) a county, city, or town within the state; or

388 (III) a school district within the state;

389 (B) serving the state, or any county, city, town, or school district under:

390 (I) an election;

391 (II) appointment; or

392 (III) any contract of hire, express or implied, written or oral; and

393 (ii) including:

394 (A) an officer or employee of the state institutions of learning; and

395 (B) a member of the National Guard while on state active duty; and

396 (b) a person in the service of any employer, as defined in Section 34A-2-103, who

397 employs one or more workers or operatives regularly in the same business, or in or about the  
398 same establishment:

399 (i) under any contract of hire:

- 400 (A) express or implied; and
- 401 (B) oral or written;
- 402 (ii) including aliens and minors, whether legally or illegally working for hire; and
- 403 (iii) not including any person whose employment:
- 404 (A) is casual; and
- 405 (B) not in the usual course of the trade, business, or occupation of the employee's
- 406 employer.

407 (2) (a) Unless a lessee provides coverage as an employer under this chapter and  
408 Chapter 3, any lessee in mines or of mining property and each employee and sublessee of the  
409 lessee shall be:

- 410 (i) covered for compensation by the lessor under this chapter and Chapter 3;
- 411 (ii) subject to this chapter and Chapter 3; and
- 412 (iii) entitled to the benefits of this chapter and Chapter 3, to the same extent as if the  
413 lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees  
414 for substantially similar work.

415 (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount  
416 equal to the insurance premium for that type of work.

417 (3) (a) A partnership or sole proprietorship may elect to include any partner of the  
418 partnership or owner of the sole proprietorship as an employee of the partnership or sole  
419 proprietorship under this chapter and Chapter 3.

420 (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a),  
421 the partnership or sole proprietorship shall serve written notice upon its insurance carrier  
422 naming the persons to be covered.

423 (c) A partner of a partnership or owner of a sole proprietorship may not be considered  
424 an employee of the partner's partnership or the owner's sole proprietorship under this chapter or  
425 Chapter 3 until the notice described in Subsection (3)(b) is given.

426 (d) For premium rate making, the insurance carrier shall assume the salary or wage of  
427 the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the  
428 state's average weekly wage.

429 (4) (a) A corporation may elect not to include any director or officer of the corporation  
430 as an employee under this chapter and Chapter 3.

431 (b) If a corporation makes an election under Subsection (4)(a), the corporation shall  
432 serve written notice upon its insurance carrier naming the persons to be excluded from  
433 coverage.

434 (c) A director or officer of a corporation is considered an employee under this chapter  
435 and Chapter 3 until the notice described in Subsection (4)(b) is given.

436 (5) As used in this chapter and Chapter 3, "employee," "worker," and "operative" do  
437 not include:

438 (a) a ~~[real-estate]~~ sales agent or ~~[real-estate]~~ associate broker, as defined in Section  
439 ~~[61-2-2]~~ 61-2f-102, who performs services in that capacity for a ~~[real-estate]~~ principal broker  
440 if:

441 (i) substantially all of the ~~[real-estate]~~ sales agent's or ~~[associated]~~ associate broker's  
442 income for services is from real estate commissions; and

443 (ii) ~~[the services of the real-estate sales agent or associated broker]~~ the sales agent's or  
444 associate broker's services are performed under a written contract that provides that:

445 (A) the real estate agent is an independent contractor; and

446 (B) the ~~[real-estate]~~ sales agent or ~~[associated]~~ associate broker is not to be treated as  
447 an employee for federal income tax purposes;

448 (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as  
449 required by federal statute or regulation;

450 (c) an individual who for an insurance producer, as defined in Section 31A-1-301,  
451 solicits, negotiates, places or procures insurance if:

452 (i) substantially all of the individual's income from those services is from insurance  
453 commissions; and

454 (ii) the services of the individual are performed under a written contract that states that  
455 the individual:

456 (A) is an independent contractor;

457 (B) is not to be treated as an employee for federal income tax purposes; and

458 (C) can derive income from more than one insurance company;

459 (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic  
460 work for a person if:

461 (i) the person for whom the domestic work is being provided receives or is eligible to

462 receive the domestic work under a state or federal program designed to pay the costs of  
463 domestic work to prevent the person from being placed in:

464 (A) an institution; or

465 (B) a more restrictive placement than where that person resides at the time the person  
466 receives the domestic work;

467 (ii) the individual is paid by a person designated by the Secretary of the Treasury in  
468 accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person  
469 that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

470 (iii) the domestic work is performed under a written contract that notifies the  
471 individual that the individual is not an employee under this chapter or Chapter 3; or

472 (e) subject to Subsections (6) and (7), an individual who:

473 (i) (A) owns a motor vehicle; or

474 (B) leases a motor vehicle to a motor carrier;

475 (ii) personally operates the motor vehicle described in Subsection (5)(e)(i);

476 (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written  
477 agreement with the motor carrier that states that the individual operates the motor vehicle as an  
478 independent contractor; and

479 (iv) provides to the motor carrier at the time the written agreement described in  
480 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by an insurer:

481 (A) a copy of a workers' compensation coverage waiver issued pursuant to Section  
482 31A-22-1011 by an insurer to the individual; and

483 (B) proof that the individual is covered by occupational accident related insurance.

484 (6) An individual described in Subsection (5)(d) or (e) may become an employee under  
485 this chapter and Chapter 3 if the employer of the individual complies with:

486 (a) this chapter and Chapter 3; and

487 (b) commission rules.

488 (7) For purposes of Subsection (5)(e):

489 (a) "Motor carrier" means a person engaged in the business of transporting freight,  
490 merchandise, or other property by a commercial vehicle on a highway within this state.

491 (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and  
492 operation on the highways, including a trailer or semitrailer designed for use with another



493 motorized vehicle.

494 (c) "Occupational accident related insurance" means insurance that provides the  
495 following coverage for an injury sustained in the course of working under a written agreement  
496 described in Subsection (5)(e)(iii):

- 497 (i) disability benefits;
- 498 (ii) death benefits;
- 499 (iii) medical expense benefits, which include:
  - 500 (A) hospital coverage;
  - 501 (B) surgical coverage;
  - 502 (C) prescription drug coverage; and
  - 503 (D) dental coverage.

504 Section 8. Section **41-1a-422** is amended to read:

505 **41-1a-422. Support special group license plates -- Contributor -- Voluntary**  
506 **contribution collection procedures.**

507 (1) As used in this section:

508 (a) (i) Except as provided in Subsection (1)(a)(ii), "contributor" means a person who  
509 has donated or in whose name at least \$25 has been donated to:

- 510 (A) a scholastic scholarship fund of a single named institution;
- 511 (B) the Department of Veterans' Affairs for veterans' programs;
- 512 (C) the Division of Wildlife Resources for the Wildlife Resources Account created in  
513 Section 23-14-13, for conservation of wildlife and the enhancement, preservation, protection,  
514 access, and management of wildlife habitat;
- 515 (D) the Department of Agriculture and Food for the benefit of conservation districts;
- 516 (E) the Division of Parks and Recreation for the benefit of snowmobile programs;
- 517 (F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with  
518 the donation evenly divided between the two;
- 519 (G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America  
520 council as specified by the contributor;
- 521 (H) No More Homeless Pets in Utah for distribution to organizations or individuals  
522 that provide spay and neuter programs that subsidize the sterilization of domestic animals;
- 523 (I) the Utah Alliance of Boys and Girls Clubs, Inc. to provide and enhance youth

524 development programs;

525 (J) the Utah Association of Public School Foundations to support public education;

526 (K) the Utah Housing Opportunity Restricted Account created in Section [~~61-2-28~~]

527 61-2-204 to assist people who have severe housing needs;

528 (L) the Public Safety Honoring Heroes Restricted Account created in Section 53-1-118

529 to support the families of fallen Utah Highway Patrol troopers and other Department of Public

530 Safety employees;

531 (M) the Division of Parks and Recreation for distribution to organizations that provide

532 support for Zion National Park;

533 (N) the Firefighter Support Restricted Account created in Section 53-7-109 to support

534 firefighter organizations; or

535 (O) the Share the Road Bicycle Support Restricted Account created in Section

536 72-2-127 to support bicycle operation and safety awareness programs.

537 (ii) (A) For a veterans' special group license plate, "contributor" means a person who

538 has donated or in whose name at least a \$25 donation at the time of application and \$10 annual

539 donation thereafter has been made.

540 (B) For a Utah Housing Opportunity special group license plate, "contributor" means a

541 person who:

542 (I) has donated or in whose name at least \$30 has been donated at the time of

543 application and annually after the time of application; and

544 (II) is a member of a trade organization for real estate licensees that has more than

545 15,000 Utah members.

546 (C) For an Honoring Heroes special group license plate, "contributor" means a person

547 who has donated or in whose name at least \$35 has been donated at the time of application and

548 annually thereafter.

549 (D) For a firefighter support special group license plate, "contributor" means a person

550 who:

551 (I) has donated or in whose name at least \$15 has been donated at the time of

552 application and annually after the time of application; and

553 (II) is a currently employed, volunteer, or retired firefighter.

554 (b) "Institution" means a state institution of higher education as defined under Section

555 53B-3-102 or a private institution of higher education in the state accredited by a regional or  
556 national accrediting agency recognized by the United States Department of Education.

557 (2) (a) An applicant for original or renewal collegiate special group license plates under  
558 Subsection (1)(a)(i) must be a contributor to the institution named in the application and  
559 present the original contribution verification form under Subsection (2)(b) or make a  
560 contribution to the division at the time of application under Subsection (3).

561 (b) An institution with a support special group license plate shall issue to a contributor  
562 a verification form designed by the commission containing:

- 563 (i) the name of the contributor;
- 564 (ii) the institution to which a donation was made;
- 565 (iii) the date of the donation; and
- 566 (iv) an attestation that the donation was for a scholastic scholarship.

567 (c) The state auditor may audit each institution to verify that the moneys collected by  
568 the institutions from contributors are used for scholastic scholarships.

569 (d) After an applicant has been issued collegiate license plates or renewal decals, the  
570 commission shall charge the institution whose plate was issued, a fee determined in accordance  
571 with Section 63J-1-504 for management and administrative expenses incurred in issuing and  
572 renewing the collegiate license plates.

573 (e) If the contribution is made at the time of application, the contribution shall be  
574 collected, treated, and deposited as provided under Subsection (3).

575 (3) (a) An applicant for original or renewal support special group license plates under  
576 this section must be a contributor to the sponsoring organization associated with the license  
577 plate.

578 (b) This contribution shall be:

- 579 (i) unless collected by the named institution under Subsection (2), collected by the  
580 division;
- 581 (ii) considered a voluntary contribution for the funding of the activities specified under  
582 this section and not a motor vehicle registration fee;
- 583 (iii) deposited into the appropriate account less actual administrative costs associated  
584 with issuing the license plates; and
- 585 (iv) for a firefighter special group license plate, deposited into the appropriate account

586 less:

587 (A) the costs of reordering firefighter special group license plate decals; and

588 (B) the costs of replacing recognition special group license plates with new license  
589 plates under Subsection 41-1a-1211(13).

590 (c) The donation described in Subsection (1)(a) must be made in the 12 months prior to  
591 registration or renewal of registration.

592 (d) The donation described in Subsection (1)(a) shall be a one-time donation made to  
593 the division when issuing original:

594 (i) snowmobile license plates; or

595 (ii) conservation license plates.

596 (4) Veterans' license plates shall display one of the symbols representing the Army,  
597 Navy, Air Force, Marines, Coast Guard, or American Legion.

598 Section 9. Section **48-2c-1502** is amended to read:

599 **48-2c-1502. Definitions.**

600 As used in this part:

601 (1) "Professional services company" means a limited liability company organized  
602 under this part to render professional services.

603 (2) "Professional services" means the personal services rendered by:

604 (a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act,  
605 and any subsequent laws regulating the practice of architecture;

606 (b) an attorney granted the authority to practice law by the:

607 (i) Supreme Court of Utah; or

608 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that  
609 licenses or regulates the authority to practice law in any state or territory of the United States  
610 other than Utah;

611 (c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician  
612 Practice Act, and any subsequent laws regulating the practice of chiropractic;

613 (d) a doctor of dentistry holding a license under Title 58, Chapter 69, [~~Dentists~~] Dentist  
614 and Dental [~~Hygienists~~] Hygienist Practice Act, and any subsequent laws, regulating the  
615 practice of dentistry;

616 (e) a professional engineer registered under Title 58, Chapter 22, Professional

617 Engineers and Professional Land Surveyors Licensing Act;

618 (f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician  
619 Practice Act, and any subsequent laws regulating the practice of naturopathy;

620 (g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,  
621 Chapter 44a, Nurse Midwife Practice Act;

622 (h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry  
623 Practice Act, and any subsequent laws regulating the practice of optometry;

624 (i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,  
625 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of  
626 osteopathy;

627 (j) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act,  
628 and any subsequent laws regulating the practice of pharmacy;

629 (k) a physician, surgeon, or doctor of medicine holding a license under Title 58,  
630 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of  
631 medicine;

632 (l) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy  
633 Practice Act, and any subsequent laws regulating the practice of physical therapy;

634 (m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric  
635 Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

636 (n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing  
637 Act, and any subsequent laws regulating the practice of psychology;

638 (o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public  
639 Accountant Licensing Act, and any subsequent laws regulating the practice of public  
640 accounting;

641 (p) a ~~[real estate broker or real estate]~~ principal broker, associate broker, or sales agent  
642 holding a license under Title 61, Chapter ~~[2, Division of Real Estate]~~ 2f, Real Estate Licensing  
643 and Practices Act, and any subsequent laws regulating the sale, exchange, purchase, rental, or  
644 leasing of real estate;

645 (q) a clinical or certified social worker holding a license under Title 58, Chapter 60,  
646 Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social  
647 work;

648 (r) a mental health therapist holding a license under Title 58, Chapter 60, Mental  
649 Health Professional Practice Act, and any subsequent laws regulating the practice of mental  
650 health therapy; ~~and~~

651 (s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act,  
652 and any subsequent laws regulating the practice of veterinary medicine~~[-];~~ or

653 (t) an individual licensed, certified, or registered under Title 61, Chapter 2b, Real  
654 Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the  
655 practice of appraising real estate.

656 (3) "Regulating board" means the board or agency organized pursuant to state law that  
657 is charged with the licensing and regulation of the practice of the profession that a company is  
658 organized to render.

659 Section 10. Section **57-11-2** is amended to read:

660 **57-11-2. Definitions.**

661 As used in this chapter:

662 (1) (a) "Disposition" includes sale, lease, assignment, award by lottery, or any other  
663 transaction concerning a subdivision, if undertaken for gain or profit.

664 (b) "Disposition" does not include the sale or lease of land held by railroads for right of  
665 way if the land is within 400 feet of the center line of a railroad tract.

666 (2) "Division" means the Division of Real Estate created in Section ~~[61-2-5]~~ 61-2-201.

667 (3) "Federal act" means the federal Interstate Land Sales Full Disclosure Act, 15  
668 U.S.C. Sec. 1701, et seq., or any successor federal act.

669 (4) (a) "Industrial park" means a subdivision or subdivided lands offered as a part of a  
670 common promotional plan of advertising and sale zoned for office, manufacturing,  
671 warehousing, commercial, industrial, distribution, or wholesale use and utilized for one or  
672 more of those purposes.

673 (b) "Industrial park" does not include land offered for sale that is designed or intended  
674 to be used for recreational, residential, including multiple family dwellings, or agricultural  
675 purposes.

676 (5) "Offer" includes an inducement, solicitation, or attempt to encourage a person to  
677 acquire an interest in land if undertaken for gain or profit.

678 (6) "Person" includes:

- 679 (a) a business trust;
- 680 (b) an estate;
- 681 (c) a trust;
- 682 (d) a partnership;
- 683 (e) an unincorporated association;
- 684 (f) two or more of any entity having a joint or common interest; or
- 685 (g) any other legal or commercial entity.

686 (7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an  
687 interest in land.

688 (8) "Residential building" means a structure intended for occupation as a residence  
689 which, at the time of an offer or disposition of the unit on which it is situated, or on which  
690 there is a legal obligation on the part of the seller to complete construction of it within two  
691 years from date of disposition, has, or if completed would have, ready access to water, gas,  
692 electricity, and roads.

693 (9) "Subdivider" means:

- 694 (a) an owner of an interest in subdivided lands who offers the subdivided lands for  
695 disposition; or
- 696 (b) a principal agent of an owner of an interest in subdivided lands if the owner is  
697 inactive.

698 (10) (a) "Subdivision" and "subdivided lands" means land that is divided or is proposed  
699 to be divided for the purpose of disposition into 10 or more units including land, whether  
700 contiguous or not, if 10 or more units are offered as a part of a common promotional plan of  
701 advertising and sale.

702 (b) If a subdivision is offered by a developer or group of developers, and the land is  
703 contiguous or is known, designated, or advertised as a common tract or by a common name,  
704 that land is presumed, without regard to the number of units covered by each individual  
705 offering, to be part of a common promotional plan.

706 (11) "Unit" includes a lot, parcel, or other interest in land separately offered for  
707 disposition.

708 Section 11. Section **57-11-14** is amended to read:

709 **57-11-14. Revocation, suspension, or denial of registration -- Grounds --**

710 **Suspension or revocation of real estate license.**

711 (1) (a) If the division makes a written finding of fact that a subdivider engages in one  
712 or more acts described in Subsection (1)(b), the division may:

- 713 (i) deny an application for registration;
- 714 (ii) revoke, suspend, or deny reissuance of a registration; or
- 715 (iii) impose a civil penalty not to exceed the greater of:
  - 716 (A) \$2,500 for each violation; or
  - 717 (B) the amount of any gain or economic benefit derived from each violation.

718 (b) Subsection (1)(a) applies if the division makes a written finding of fact that a  
719 subdivider:

- 720 (i) fails to comply with the terms of a cease and desist order;
- 721 (ii) is convicted in a court prior or subsequent to the filing of the application for  
722 registration of a crime involving:
  - 723 (A) fraud;
  - 724 (B) deception;
  - 725 (C) false pretenses;
  - 726 (D) misrepresentation;
  - 727 (E) false advertising; or
  - 728 (F) dishonest dealing in real estate transactions;
- 729 (iii) is subject to an injunction or administrative order restraining a false or misleading  
730 promotional plan involving land dispositions;
- 731 (iv) disposes of, conceals, or diverts funds or assets of any person so as to defeat the  
732 rights of subdivision purchasers;
- 733 (v) fails to perform faithfully a stipulation or agreement made with the division as an  
734 inducement to:
  - 735 (A) grant a registration;
  - 736 (B) reinstate a registration;
  - 737 (C) revoke a cease and desist order; or
  - 738 (D) approve any promotional plan or public offering statement;
- 739 (vi) makes an intentional misrepresentation, or conceals a material fact, in an  
740 application for registration;



741 (vii) violates this chapter or the rules adopted under this chapter;

742 (viii) directly or through an agent or employee knowingly engages in false, deceptive,  
743 or misleading advertising, promotional, or sales methods to offer or dispose of an interest in  
744 subdivided lands;

745 (ix) engages in the offering of subdivided lands that has constituted or that may  
746 constitute a fraud upon purchasers or prospective purchasers of the subdivided lands; or

747 (x) engages in a dishonest practice in any industry involving sales to consumers.

748 (c) The division shall accompany with a finding of fact required by this Subsection (1)  
749 a concise and explicit statement of the underlying facts supporting the finding.

750 (2) As an alternative to revoking the registration of a subdivider, the director may issue  
751 a cease and desist order if after notice and a hearing the director finds that the subdivider is  
752 guilty of a violation for which revocation may be ordered.

753 (3) (a) The division shall suspend or revoke the license of a [~~real estate~~] broker or [~~real~~  
754 ~~estate~~] sales agent who violates this chapter for the period of time the director determines to be  
755 justified under the circumstances.

756 (b) A suspension or revocation under this section is in addition to any other penalty  
757 that may be imposed under this chapter, subject to [~~the provisions of~~] Section [~~61-2-12~~]  
758 61-2f-404.

759 Section 12. Section **57-19-14** is amended to read:

760 **57-19-14. Registration of salesperson.**

761 (1) Unless the transaction is exempt under Section 57-19-26, it is unlawful for any  
762 person to act as a salesperson marketing a project in this state without first registering under  
763 this chapter as a salesperson.

764 (2) The fee for registration as a salesperson is waived by the division for persons  
765 licensed by the division under Title 61, Chapter [~~2~~] 2f, Real Estate Licensing and Practices Act.

766 Section 13. Section **57-21-2** is amended to read:

767 **57-21-2. Definitions.**

768 As used in this chapter:

769 (1) "Aggrieved person" includes any person who:

770 (a) claims to have been injured by a discriminatory housing practice; or

771 (b) believes that the person will be injured by a discriminatory housing practice that is

772 about to occur.

773 (2) "Commission" means the Labor Commission.

774 (3) "Complainant" means an aggrieved person, including the director, who has  
775 commenced a complaint with the division.

776 (4) "Conciliation" means the attempted resolution of issues raised by a complaint of  
777 discriminatory housing practices by the investigation of the complaint through informal  
778 negotiations involving the complainant, the respondent, and the division.

779 (5) "Conciliation agreement" means a written agreement setting forth the resolution of  
780 the issues in conciliation.

781 (6) "Conciliation conference" means the attempted resolution of issues raised by a  
782 complaint or by the investigation of a complaint through informal negotiations involving the  
783 complainant, the respondent, and the division. The conciliation conference is not subject to  
784 Title 63G, Chapter 4, Administrative Procedures Act.

785 (7) "Covered multifamily dwellings" means:

786 (a) buildings consisting of four or more dwelling units if the buildings have one or  
787 more elevators; and

788 (b) ground floor units in other buildings consisting of four or more dwelling units.

789 (8) "Director" means the director of the division or a designee.

790 (9) (a) "Disability" means a physical or mental impairment that substantially limits one  
791 or more of a person's major life activities, including a person having a record of such an  
792 impairment or being regarded as having such an impairment.

793 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
794 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
795 Sec. 802.

796 (10) "Discriminate" includes segregate or separate.

797 (11) "Discriminatory housing practice" means an act that is unlawful under this  
798 chapter.

799 (12) "Division" means the Division of Antidiscrimination and Labor established under  
800 the commission.

801 (13) (a) "Dwelling" means any building or structure, or a portion of a building or  
802 structure, occupied as, or designed or intended for occupancy as, a residence of one or more

803 families.

804 (b) "Dwelling" also includes vacant land that is offered for sale or lease for the  
805 construction or location of a dwelling as described in Subsection (13)(a).

806 (14) (a) "Familial status" means one or more individuals who have not attained the age  
807 of 18 years being domiciled with:

808 (i) a parent or another person having legal custody of the individual or individuals; or

809 (ii) the designee of the parent or other person having custody, with the written  
810 permission of the parent or other person.

811 (b) The protections afforded against discrimination on the basis of familial status shall  
812 apply to any person who:

813 (i) is pregnant;

814 (ii) is in the process of securing legal custody of any individual who has not attained  
815 the age of 18 years; or

816 (iii) is a single individual.

817 (15) "National origin" means the place of birth of an individual or of any lineal  
818 ancestors.

819 (16) "Person" includes one or more individuals, corporations, limited liability  
820 companies, partnerships, associations, labor organizations, legal representatives, mutual  
821 companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in  
822 cases under the United States Bankruptcy Code, receivers, and fiduciaries.

823 (17) "Presiding officer" has the same meaning as provided in Section 63G-4-103.

824 (18) "Real estate broker" or "salesperson" means a principal [~~real estate~~] broker, an  
825 associate [~~real estate~~] broker, or a [~~real estate~~] sales agent as those terms are defined in Section  
826 [~~61-2-2~~] 61-2f-102.

827 (19) "Respondent" means a person against whom a complaint of housing  
828 discrimination has been initiated.

829 (20) "Sex" means gender and includes pregnancy, childbirth, and disabilities related to  
830 pregnancy or childbirth.

831 (21) "Source of income" means the verifiable condition of being a recipient of federal,  
832 state, or local assistance, including medical assistance, or of being a tenant receiving federal,  
833 state, or local subsidies, including rental assistance or rent supplements.

834 Section 14. Section **57-23-5** is amended to read:

835 **57-23-5. License required.**

836 Except as provided by Section [~~61-2-3~~] 61-2f-202, an individual may not offer, sell, or  
837 otherwise dispose of a cooperative interest in this state unless ~~[he]~~ the individual is licensed by  
838 the division under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate Licensing and  
839 Practices Act, as a principal [~~real estate~~] broker, associate [~~real estate~~] broker, or [~~real estate~~]  
840 sales agent.

841 Section 15. Section **57-27-102** is amended to read:

842 **57-27-102. Definitions.**

843 As used in this chapter:

844 (1) "Contaminated" or "contamination" is as defined in Section 19-6-902.

845 (2) "Decontaminated" or "decontamination" is as defined in Section 19-6-902.

846 (3) (a) "Owner" means the holder of a legal or equitable title or interest in real  
847 property.

848 (b) "Owner" includes a shareholder, partner, operator, or other legal entity.

849 (4) "Real estate professional" means a licensee under Title 61, Chapter [~~2, Division of~~  
850 ~~Real Estate~~] 2f, Real Estate Licensing and Practices Act.

851 Section 16. Section **58-56-16** is amended to read:

852 **58-56-16. Registration of dealers -- Bonding requirements -- Renewal --**  
853 **Exemptions -- Discipline.**

854 (1) Each person engaged in the sale of factory built housing in the state, except as  
855 provided in Subsection (4), shall register with the division as a dealer.

856 (2) Each applicant for registration under this section shall:

857 (a) submit an application in a form prescribed by the division;

858 (b) pay a fee determined by the department under Section 63J-1-504; and

859 (c) provide the division with a registration bond in accordance with rules established  
860 by the division.

861 (3) (a) The division shall issue each registration under this section in accordance with a  
862 two-year renewal cycle established by rule.

863 (b) The division may by rule extend or shorten a renewal cycle by as much as one year  
864 to stagger the renewal cycles it administers.

865 (c) Each registration under this section automatically expires on the expiration date on  
866 the certificate of registration unless the registrant renews it in accordance with Section  
867 58-1-308.

868 (4) Subsection (1) does not apply to:

869 (a) a person not regularly engaged in the sale of factory built housing who is selling a  
870 unit the person owns for the person's own account;

871 (b) a principal broker licensed under Title 61, Chapter [~~2, Division of Real Estate~~] 2f,  
872 Real Estate Licensing and Practices Act; or

873 (c) a sales agent or associate broker licensed under Title 61, Chapter [~~2, Division of~~  
874 Real Estate] 2f, Real Estate Licensing and Practices Act, who sells factory built housing as an  
875 agent for, and under the supervision of, the [~~licensed~~] principal broker with whom the sales  
876 agent or associate broker is affiliated.

877 (5) Grounds for refusing to issue a registration, for refusing to renew a registration, for  
878 revoking, suspending, restricting, or placing on probation a registration, for issuing a public or  
879 private reprimand to a registrant, and for issuing a cease and desist order shall be in accordance  
880 with Section 58-1-401.

881 Section 17. Section **61-1-13** is amended to read:

882 **61-1-13. Definitions.**

883 (1) As used in this chapter:

884 (a) "Affiliate" means a person that, directly or indirectly, through one or more  
885 intermediaries, controls or is controlled by, or is under common control with a person  
886 specified.

887 (b) (i) "Agent" means an individual other than a broker-dealer who represents a  
888 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

889 (ii) "Agent" does not include an individual who represents:

890 (A) an issuer, who receives no commission or other remuneration, directly or  
891 indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and  
892 who effects transactions:

893 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

894 (II) exempted by Subsection 61-1-14(2);

895 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the

896 Securities Act of 1933; or

897 (IV) with existing employees, partners, officers, or directors of the issuer; or

898 (B) a broker-dealer in effecting transactions in this state limited to those transactions  
899 described in Section 15(h)(2) of the Securities Exchange Act of 1934.

900 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a  
901 similar status or performing similar functions, is an agent only if the partner, officer, director,  
902 or person otherwise comes within the definition of "agent."

903 (iv) "Agent" does not include a person described in Subsection (3).

904 (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions  
905 in securities for the account of others or for the person's own account.

906 (ii) "Broker-dealer" does not include:

907 (A) an agent;

908 (B) an issuer;

909 (C) a depository institution or trust company;

910 (D) a person who has no place of business in this state if:

911 (I) the person effects transactions in this state exclusively with or through:

912 (Aa) the issuers of the securities involved in the transactions;

913 (Bb) other broker-dealers;

914 (Cc) a depository institution, whether acting for itself or as a trustee;

915 (Dd) a trust company, whether acting for itself or as a trustee;

916 (Ee) an insurance company, whether acting for itself or as a trustee;

917 (Ff) an investment company, as defined in the Investment Company Act of 1940,

918 whether acting for itself or as a trustee;

919 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or

920 (Hh) another financial institution or institutional buyer, whether acting for itself or as a  
921 trustee; or

922 (II) during any period of 12 consecutive months the person does not direct more than  
923 15 offers to sell or buy into this state in any manner to persons other than those specified in  
924 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;

925 (E) a general partner who organizes and effects transactions in securities of three or  
926 fewer limited partnerships, of which the person is the general partner, in any period of 12

927 consecutive months;

928 (F) a person whose participation in transactions in securities is confined to those  
929 transactions made by or through a broker-dealer licensed in this state;

930 (G) a person who is a [~~real-estate~~] principal broker or associate broker licensed in this  
931 state and who effects transactions in a bond or other evidence of indebtedness secured by a real  
932 or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if  
933 the entire mortgage, deed or trust, or agreement, together with all the bonds or other evidences  
934 of indebtedness secured thereby, is offered and sold as a unit;

935 (H) a person effecting transactions in commodity contracts or commodity options;

936 (I) a person described in Subsection (3); or

937 (J) other persons as the division, by rule or order, may designate, consistent with the  
938 public interest and protection of investors, as not within the intent of this Subsection (1)(c).

939 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or  
940 acquisition of a security or interest in a security for value.

941 (e) "Commission" means the Securities Commission created in Section 61-1-18.5.

942 (f) "Commodity" means, except as otherwise specified by the division by rule:

943 (i) an agricultural, grain, or livestock product or byproduct, except real property or a  
944 timber, agricultural, or livestock product grown or raised on real property and offered or sold  
945 by the owner or lessee of the real property;

946 (ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair  
947 market value is at least 15% greater than the value of the metal it contains;

948 (iii) a gem or gemstone, whether characterized as precious, semi-precious, or  
949 otherwise;

950 (iv) a fuel, whether liquid, gaseous, or otherwise;

951 (v) a foreign currency; and

952 (vi) all other goods, articles, products, or items of any kind, except a work of art  
953 offered or sold by art dealers, at public auction or offered or sold through a private sale by the  
954 owner of the work.

955 (g) (i) "Commodity contract" means an account, agreement, or contract for the  
956 purchase or sale, primarily for speculation or investment purposes and not for use or  
957 consumption by the offeree or purchaser, of one or more commodities, whether for immediate

958 or subsequent delivery or whether delivery is intended by the parties, and whether characterized  
959 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures  
960 contract, installment or margin contract, leverage contract, or otherwise.

961 (ii) A commodity contract offered or sold shall, in the absence of evidence to the  
962 contrary, be presumed to be offered or sold for speculation or investment purposes.

963 (iii) (A) A commodity contract may not include a contract or agreement that requires,  
964 and under which the purchaser receives, within 28 calendar days from the payment in good  
965 funds any portion of the purchase price, physical delivery of the total amount of each  
966 commodity to be purchased under the contract or agreement.

967 (B) A purchaser is not considered to have received physical delivery of the total  
968 amount of each commodity to be purchased under the contract or agreement when the  
969 commodity or commodities are held as collateral for a loan or are subject to a lien of any  
970 person when the loan or lien arises in connection with the purchase of each commodity or  
971 commodities.

972 (h) (i) "Commodity option" means an account, agreement, or contract giving a party to  
973 the option the right but not the obligation to purchase or sell one or more commodities or one  
974 or more commodity contracts, or both whether characterized as an option, privilege, indemnity,  
975 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

976 (ii) "Commodity option" does not include an option traded on a national securities  
977 exchange registered:

978 (A) with the Securities and Exchange Commission; or

979 (B) on a board of trade designated as a contract market by the Commodity Futures  
980 Trading Commission.

981 (i) "Depository institution" is as defined in Section 7-1-103.

982 (j) "Director" means the director of the division appointed in accordance with Section  
983 61-1-18.

984 (k) "Division" means the Division of Securities established by Section 61-1-18.

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

986 (m) "Federal covered adviser" means a person who:

987 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or

988 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of



989 the Investment Advisers Act of 1940.

990 (n) "Federal covered security" means a security that is a covered security under Section  
991 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of  
992 the Securities Act of 1933.

993 (o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

994 (p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt  
995 securities, or dividends as to equity securities.

996 (q) (i) "Investment adviser" means a person who:

997 (A) for compensation, engages in the business of advising others, either directly or  
998 through publications or writings, as to the value of securities or as to the advisability of  
999 investing in, purchasing, or selling securities; or

1000 (B) for compensation and as a part of a regular business, issues or promulgates  
1001 analyses or reports concerning securities.

1002 (ii) "Investment adviser" includes a financial planner or other person who:

1003 (A) as an integral component of other financially related services, provides the  
1004 investment advisory services described in Subsection (1)(q)(i) to others for compensation and  
1005 as part of a business; or

1006 (B) holds the person out as providing the investment advisory services described in  
1007 Subsection (1)(q)(i) to others for compensation.

1008 (iii) "Investment adviser" does not include:

1009 (A) an investment adviser representative;

1010 (B) a depository institution or trust company;

1011 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is  
1012 solely incidental to the practice of the profession;

1013 (D) a broker-dealer or its agent whose performance of these services is solely  
1014 incidental to the conduct of its business as a broker-dealer and who receives no special  
1015 compensation for the services;

1016 (E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or  
1017 business or financial publication or service, of general, regular, and paid circulation, whether  
1018 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of  
1019 the rendering of advice on the basis of the specific investment situation of each client;

1020 (F) a person who is a federal covered adviser;  
1021 (G) a person described in Subsection (3); or  
1022 (H) such other persons not within the intent of this Subsection (1)(q) as the division  
1023 may by rule or order designate.

1024 (r) (i) "Investment adviser representative" means a partner, officer, director of, or a  
1025 person occupying a similar status or performing similar functions, or other individual, except  
1026 clerical or ministerial personnel, who:

1027 (A) (I) is employed by or associated with an investment adviser who is licensed or  
1028 required to be licensed under this chapter; or

1029 (II) has a place of business located in this state and is employed by or associated with a  
1030 federal covered adviser; and

1031 (B) does any of the following:

1032 (I) makes a recommendation or otherwise renders advice regarding securities;

1033 (II) manages accounts or portfolios of clients;

1034 (III) determines which recommendation or advice regarding securities should be given;

1035 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

1036 or

1037 (V) supervises employees who perform any of the acts described in this Subsection  
1038 (1)(r)(i)(B).

1039 (ii) "Investment adviser representative" does not include a person described in  
1040 Subsection (3).

1041 (s) "Investment contract" includes:

1042 (i) an investment in a common enterprise with the expectation of profit to be derived  
1043 through the essential managerial efforts of someone other than the investor; or

1044 (ii) an investment by which:

1045 (A) an offeree furnishes initial value to an offerer;

1046 (B) a portion of the initial value is subjected to the risks of the enterprise;

1047 (C) the furnishing of the initial value is induced by the offerer's promises or  
1048 representations that give rise to a reasonable understanding that a valuable benefit of some kind  
1049 over and above the initial value will accrue to the offeree as a result of the operation of the  
1050 enterprise; and

1051 (D) the offeree does not receive the right to exercise practical or actual control over the  
1052 managerial decisions of the enterprise.

1053 (t) "Isolated transaction" means not more than a total of two transactions that occur  
1054 anywhere during six consecutive months.

1055 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has  
1056 outstanding a security that it has issued.

1057 (ii) With respect to a preorganization certificate or subscription, "issuer" means the one  
1058 or more promoters of the person to be organized.

1059 (iii) "Issuer" means the one or more persons performing the acts and assuming duties  
1060 of a depositor or manager under the provisions of the trust or other agreement or instrument  
1061 under which the security is issued with respect to:

1062 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and  
1063 certificates of deposit for securities; or

1064 (B) shares in an investment company without a board of directors.

1065 (iv) With respect to an equipment trust certificate, a conditional sales contract, or  
1066 similar securities serving the same purpose, "issuer" means the person by whom the equipment  
1067 or property is to be used.

1068 (v) With respect to interests in partnerships, general or limited, "issuer" means the  
1069 partnership itself and not the general partner or partners.

1070 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or  
1071 leases or in payment out of production under the titles or leases, "issuer" means the owner of  
1072 the title or lease or right of production, whether whole or fractional, who creates fractional  
1073 interests therein for the purpose of sale.

1074 (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any  
1075 of the following that is the subject of a life settlement:

1076 (A) a policy; or

1077 (B) the death benefit under a policy.

1078 (ii) "Life settlement interest" does not include the initial purchase from the owner by a  
1079 life settlement provider.

1080 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

1081 (x) "Person" means:

- 1082 (i) an individual;
- 1083 (ii) a corporation;
- 1084 (iii) a partnership;
- 1085 (iv) a limited liability company;
- 1086 (v) an association;
- 1087 (vi) a joint-stock company;
- 1088 (vii) a joint venture;
- 1089 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
- 1090 (ix) an unincorporated organization;
- 1091 (x) a government; or
- 1092 (xi) a political subdivision of a government.
- 1093 (y) "Precious metal" means the following, whether in coin, bullion, or other form:
  - 1094 (i) silver;
  - 1095 (ii) gold;
  - 1096 (iii) platinum;
  - 1097 (iv) palladium;
  - 1098 (v) copper; and
  - 1099 (vi) such other substances as the division may specify by rule.
- 1100 (z) "Promoter" means a person who, acting alone or in concert with one or more
- 1101 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 1102 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
- 1103 is:
  - 1104 (A) inscribed in a tangible medium; or
  - 1105 (B) (I) stored in an electronic or other medium; and
  - 1106 (II) retrievable in perceivable form.
- 1107 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
- 1108 including when "record" is used in the following phrases:
  - 1109 (A) "of record";
  - 1110 (B) "official record"; or
  - 1111 (C) "public record."
- 1112 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,

1113 a security or interest in a security for value.

1114 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of  
1115 an offer to buy, a security or interest in a security for value.

1116 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

1117 (A) a security given or delivered with or as a bonus on account of a purchase of a  
1118 security or any other thing, is part of the subject of the purchase, and is offered and sold for  
1119 value;

1120 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied  
1121 on the stock;

1122 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire  
1123 or subscribe to another security of the same or another issuer is an offer or sale of that security,  
1124 and also an offer of the other security, whether the right to convert or acquire is exercisable  
1125 immediately or in the future;

1126 (D) a conversion or exchange of one security for another constitutes an offer or sale of  
1127 the security received in a conversion or exchange, and the offer to buy or the purchase of the  
1128 security converted or exchanged;

1129 (E) securities distributed as a dividend wherein the person receiving the dividend  
1130 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or  
1131 sale;

1132 (F) a dividend of a security of another issuer is an offer or sale; or

1133 (G) the issuance of a security under a merger, consolidation, reorganization,  
1134 recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the  
1135 security issued as well as the offer to buy or the purchase of a security surrendered in  
1136 connection therewith, unless the sole purpose of the transaction is to change the issuer's  
1137 domicile.

1138 (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

1139 (A) a good faith gift;

1140 (B) a transfer by death;

1141 (C) a transfer by termination of a trust or of a beneficial interest in a trust;

1142 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or

1143 (E) a securities split or reverse split.

1144 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment  
1145 Company Act of 1940" mean the federal statutes of those names as amended before or after the  
1146 effective date of this chapter.

1147 (dd) "Securities Exchange Commission" means the United States Securities Exchange  
1148 Commission created by the Securities Exchange Act of 1934.

1149 (ee) (i) "Security" means a:

1150 (A) note;

1151 (B) stock;

1152 (C) treasury stock;

1153 (D) bond;

1154 (E) debenture;

1155 (F) evidence of indebtedness;

1156 (G) certificate of interest or participation in a profit-sharing agreement;

1157 (H) collateral-trust certificate;

1158 (I) preorganization certificate or subscription;

1159 (J) transferable share;

1160 (K) investment contract;

1161 (L) burial certificate or burial contract;

1162 (M) voting-trust certificate;

1163 (N) certificate of deposit for a security;

1164 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in  
1165 payments out of production under such a title or lease;

1166 (P) commodity contract or commodity option;

1167 (Q) interest in a limited liability company;

1168 (R) life settlement interest; or

1169 (S) in general, an interest or instrument commonly known as a "security," or a  
1170 certificate of interest or participation in, temporary or interim certificate for, receipt for,  
1171 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections  
1172 (1)(ee)(i)(A) through (R).

1173 (ii) "Security" does not include:

1174 (A) an insurance or endowment policy or annuity contract under which an insurance

1175 company promises to pay money in a lump sum or periodically for life or some other specified  
1176 period;

1177 (B) an interest in a limited liability company in which the limited liability company is  
1178 formed as part of an estate plan where all of the members are related by blood or marriage, or  
1179 the person claiming this exception can prove that all of the members are actively engaged in the  
1180 management of the limited liability company; or

1181 (C) (I) a whole long-term estate in real property;

1182 (II) an undivided fractionalized long-term estate in real property that consists of 10 or  
1183 fewer owners; or

1184 (III) an undivided fractionalized long-term estate in real property that consists of more  
1185 than 10 owners if, when the real property estate is subject to a management agreement:

1186 (Aa) the management agreement permits a simple majority of owners of the real  
1187 property estate to not renew or to terminate the management agreement at the earlier of the end  
1188 of the management agreement's current term, or 180 days after the day on which the owners  
1189 give notice of termination to the manager;

1190 (Bb) the management agreement prohibits, directly or indirectly, the lending of the  
1191 proceeds earned from the real property estate or the use or pledge of its assets to a person or  
1192 entity affiliated with or under common control of the manager; and

1193 (Cc) the management agreement complies with any other requirement imposed by rule  
1194 by the Real Estate Commission under Section [~~61-2-26~~] 61-2f-103.

1195 (iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the  
1196 right to vote, or the right to information concerning the business and affairs of the limited  
1197 liability company, or the right to participate in management, may not establish, without more,  
1198 that all members are actively engaged in the management of the limited liability company.

1199 (ff) "State" means a state, territory, or possession of the United States, the District of  
1200 Columbia, and Puerto Rico.

1201 (gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real  
1202 property by two or more persons that is a:

1203 (A) tenancy in common; or

1204 (B) any other legal form of undivided estate in real property including:

1205 (I) a fee estate;

1206 (II) a life estate; or  
1207 (III) other long-term estate.  
1208 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.  
1209 (hh) "Whole long-term estate" means a person owns or persons through joint tenancy  
1210 own real property through:  
1211 (i) a fee estate;  
1212 (ii) a life estate; or  
1213 (iii) other long-term estate.  
1214 (ii) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal  
1215 holidays listed in Section 63G-1-301.  
1216 (2) A term not defined in this section shall have the meaning as established by division  
1217 rule. The meaning of a term neither defined in this section nor by rule of the division shall be  
1218 the meaning commonly accepted in the business community.  
1219 (3) (a) This Subsection (3) applies to:  
1220 (i) the offer or sale of a real property estate exempted from the definition of security  
1221 under Subsection (1)(ee)(ii)(C); or  
1222 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a  
1223 security.  
1224 (b) A person who, directly or indirectly receives compensation in connection with the  
1225 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,  
1226 broker-dealer, investment adviser, or investment adviser representative under this chapter if  
1227 that person is licensed under Chapter ~~[2, Division of Real Estate]~~ 2f, Real Estate Licensing and  
1228 Practices Act, as:  
1229 (i) a principal ~~[real estate]~~ broker;  
1230 (ii) an associate ~~[real estate]~~ broker; or  
1231 (iii) a ~~[real estate]~~ sales agent.  
1232 (4) The list of real property estates excluded from the definition of securities under  
1233 Subsection (1)(ee)(ii)(C) is not an exclusive list of real property estates or interests that are not  
1234 a security.  
1235 Section 18. Section **61-2-101** is enacted to read:

**CHAPTER 2. DIVISION OF REAL ESTATE**



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**Part 1. General Provisions**

**61-2-101. Title.**

This chapter is known as the "Division of Real Estate."

Section 19. Section **61-2-102** is enacted to read:

**61-2-102. Definitions.**

As used in this chapter:

- (1) "Department" means the Department of Commerce.
- (2) "Director" means the director of the division appointed under Section 61-2-201.
- (3) "Division" means the Division of Real Estate created in Section 61-2-201.
- (4) "Executive director" means the executive director of the department appointed

under Section 13-1-3.

Section 20. Section **61-2-201**, which is renumbered from Section 61-2-5 is renumbered and amended to read:

**Part 2. Organization**

**[61-2-5]. 61-2-201. Division of Real Estate created -- Director appointed -- Personnel.**

(1) There is created within the [~~Department of Commerce~~] department a Division of Real Estate. [~~H~~] The division is responsible for the administration and enforcement of:

- (a) this chapter;
- (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
- ~~[(e) Chapter 2a, Real Estate Recovery Fund Act;]~~
- ~~[(f)]~~ (e) Chapter 2b, Real Estate Appraiser Licensing and Certification Act;
- ~~[(g)]~~ (f) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; [~~and~~]
- ~~[(h)]~~ (g) Chapter 2e, Appraisal Management Company Registration and Regulation

Act[-]; and

(h) Chapter 2f, Real Estate Licensing and Practices Act.

(2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds the office of director at the pleasure of the governor.

1268 (3) The director, with the approval of the executive director, may employ personnel  
1269 necessary to discharge the duties of the division at salaries to be fixed by the director according  
1270 to standards established by the Department of Administrative Services.

1271 ~~[(4) On or before October 1 of each year, the director shall, in conjunction with the~~  
1272 ~~department, report to the governor and the Legislature concerning the division's work for the~~  
1273 ~~preceding fiscal year ending June 30.]~~

1274 ~~[(5) The director, in conjunction with the executive director, shall prepare and submit~~  
1275 ~~to the governor and the Legislature a budget for the fiscal year next following the convening of~~  
1276 ~~the Legislature.]~~

1277 Section 21. Section **61-2-202** is enacted to read:

1278 **61-2-202. Powers and duties of the director or division.**

1279 (1) On or before October 1 of each year, in conjunction with the department, the  
1280 director shall report to the governor and the Legislature concerning the division's work for the  
1281 fiscal year immediately preceding the report.

1282 (2) In conjunction with the executive director, the director shall prepare and submit to  
1283 the governor and the Legislature a budget for the fiscal year that follows the convening of the  
1284 Legislature.

1285 Section 22. Section **61-2-203**, which is renumbered from Section 61-2-5.1 is  
1286 renumbered and amended to read:

1287 ~~[61-2-5.1].~~ **61-2-203. Adjudicative proceedings.**

1288 The ~~[Division of Real Estate]~~ division shall comply with ~~[the procedures and~~  
1289 ~~requirements of]~~ Title 63G, Chapter 4, Administrative Procedures Act, in ~~[its]~~ an adjudicative  
1290 ~~[proceedings]~~ proceeding under a chapter the division administers.

1291 Section 23. Section **61-2-204**, which is renumbered from Section 61-2-28 is  
1292 renumbered and amended to read:

1293 ~~[61-2-28].~~ **61-2-204. Utah Housing Opportunity Restricted Account.**

1294 (1) For purposes of this section, "account" means the Utah Housing Opportunity  
1295 Restricted Account created by this section.

1296 ~~[(1)]~~ (2) There is created in the General Fund a restricted account known as the "Utah  
1297 Housing Opportunity Restricted Account."

1298 ~~[(2)]~~ (3) The account shall be funded by:

1299 (a) contributions deposited into the [~~Utah Housing Opportunity Restricted Account~~  
 1300 account in accordance with Section 41-1a-422;

1301 (b) private contributions; and

1302 (c) donations or grants from public or private entities.

1303 [~~3~~] (4) Money in the account [~~are~~] is nonlapsing.

1304 [~~4~~] (5) (a) The state treasurer shall invest [~~monies~~] money in the account according to  
 1305 Title 51, Chapter 7, State Money Management Act.

1306 (b) The Division of Finance shall deposit interest or other earnings derived from  
 1307 investment of account [~~monies~~] money into the General Fund.

1308 [~~5~~] (6) The Legislature shall appropriate money in the account to the division.

1309 [~~6~~] (7) The division shall distribute the [~~funds~~] money in the account to one or more  
 1310 charitable organizations that:

1311 (a) [~~qualify as being~~] are tax exempt under Section 501(c)(3), Internal Revenue Code;  
 1312 and

1313 (b) have as a primary part of their mission to provide support to organizations that  
 1314 create affordable housing for those in severe need.

1315 [~~7~~] (8) The division may [~~only consider proposals that are~~] consider a proposal only if  
 1316 it is:

1317 (a) proposed by an organization [~~under~~] described in Subsection [~~6~~] (7); and

1318 (b) designed to provide support to organizations that create affordable housing for  
 1319 those in severe need.

1320 [~~8~~] (9) (a) An organization described in Subsection [~~6~~] (7) may apply to the division  
 1321 to receive a distribution in accordance with Subsection [~~6~~] (7).

1322 (b) An organization that receives a distribution from the division in accordance with  
 1323 Subsection [~~6~~] (7) shall expend the distribution only to provide support to organizations that  
 1324 create affordable housing for those in severe need.

1325 [~~9~~] (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
 1326 Act, the division shall make rules providing procedures for an organization to apply to receive  
 1327 [~~funds~~] money under this section.

1328 Section 24. Section **61-2b-2** is amended to read:

1329 **61-2b-2. Definitions.**

1330 (1) As used in this chapter:

1331 (a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the  
1332 nature, quality, value, or utility of a specified interest in, or aspect of, identified real estate or  
1333 identified real property.

1334 (ii) An appraisal is classified by the nature of the assignment as a valuation appraisal,  
1335 an analysis assignment, or a review assignment in accordance with the following definitions:

1336 (A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that  
1337 relates to the nature, quality, or utility of identified real estate or identified real property.

1338 (B) "Review assignment" means an unbiased analysis, opinion, or conclusion that  
1339 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis  
1340 assignment.

1341 (C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that  
1342 estimates the value of an identified parcel of real estate or identified real property at a particular  
1343 point in time.

1344 (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as  
1345 an Illinois not-for-profit corporation on November 30, 1987.

1346 (c) (i) "Appraisal report" means a communication, written or oral, of an appraisal.

1347 (ii) An appraisal report is classified by the nature of the assignment as a valuation  
1348 report, analysis report, or review report in accordance with the definitions provided in  
1349 Subsection (1)(a)(ii).

1350 (iii) The testimony of a person relating to the person's analyses, conclusions, or  
1351 opinions concerning identified real estate or identified real property is considered to be an oral  
1352 appraisal report.

1353 (d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the  
1354 Appraisal Foundation.

1355 [~~(d)~~] (e) "Board" means the Real Estate Appraiser Licensing and Certification Board  
1356 that is established in Section 61-2b-7.

1357 [~~(e)~~] (f) "Certified appraisal report" means a written or oral appraisal report that is  
1358 certified by a state-certified general appraiser or state-certified residential appraiser.

1359 (g) "Concurrence" means that the entities that are given a concurring role jointly agree  
1360 to an action.

1361           ~~[(f)]~~ (h) (i) (A) "Consultation service" means an engagement to provide a real estate  
1362 valuation service analysis, opinion, conclusion, or other service that does not fall within the  
1363 definition of appraisal.

1364           (B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or  
1365 review assignment.

1366           (ii) Regardless of the intention of the client or employer, if a person prepares an  
1367 unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to  
1368 be an appraisal and not a consultation service.

1369           ~~[(g)]~~ (i) "Contingent fee" means a fee or other form of compensation, payment of  
1370 which is dependent on or conditioned by:

1371           (i) the reporting of a predetermined analysis, opinion, or conclusion by the person  
1372 performing the analysis, opinion, or conclusion; or

1373           (ii) achieving a result specified by the person requesting the analysis, opinion, or  
1374 conclusion.

1375           ~~[(h)]~~ (j) "Division" means the Division of Real Estate of the Department of Commerce.

1376           ~~[(i)]~~ (k) "Federally related transaction" means a real estate related transaction that is  
1377 required by federal law or by federal regulation to be supported by an appraisal prepared by:

1378           (i) a state-licensed appraiser; or

1379           (ii) a state-certified appraiser.

1380           ~~[(j)]~~ (l) "Real estate" means an identified parcel or tract of land including  
1381 improvements if any.

1382           ~~[(k)]~~ (m) "Real estate appraisal activity" means the act or process of making an  
1383 appraisal of real estate or real property and preparing an appraisal report.

1384           ~~[(l)]~~ (n) "Real estate related transaction" means:

1385           (i) the sale, lease, purchase, investment in, or exchange of real property or an interest in  
1386 real property, or the financing of such a transaction;

1387           (ii) the refinancing of real property or an interest in real property; or

1388           (iii) the use of real property or an interest in real property as security for a loan or  
1389 investment, including mortgage-backed securities.

1390           ~~[(m)]~~ (o) "Real property" means one or more defined interests, benefits, or rights  
1391 inherent in the ownership of real estate.

1392           ~~[(n)]~~ (p) "State-certified general appraiser" means a person who holds a current, valid  
 1393 certification as a state-certified general appraiser issued under this chapter.

1394           ~~[(o)]~~ (q) "State-certified residential appraiser" means a person who holds a current,  
 1395 valid certification as a state-certified residential real estate appraiser issued under this chapter.

1396           ~~[(p)]~~ (r) "State-licensed appraiser" means a person who holds a current, valid license as  
 1397 a state-licensed appraiser issued under this chapter.

1398           ~~[(q)]~~ (s) "Trainee" means an individual who:

1399           (i) does not hold an appraiser license or appraiser certification issued under this  
 1400 chapter;

1401           (ii) works under the direct supervision of a state-certified appraiser to earn experience  
 1402 for licensure; and

1403           (iii) is registered as a trainee under this chapter.

1404           ~~[(r)]~~ (t) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or  
 1405 conclusion relating to the nature, quality, value, or utility of identified real estate or identified  
 1406 real property that is prepared by a person who is employed or retained to act, or would be  
 1407 perceived by third parties or the public as acting, as a disinterested third party in rendering the  
 1408 analysis, opinion, or conclusion.

1409           (2) (a) If a term not defined in this section is defined by rule, the term shall have the  
 1410 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,  
 1411 Utah Administrative Rulemaking Act.

1412           (b) If a term not defined in this section is not defined by rule, the term shall have the  
 1413 meaning commonly accepted in the business community.

1414           Section 25. Section **61-2b-3** is amended to read:

1415           **61-2b-3. License or certification required.**

1416           (1) Except as provided in Subsection (2) and in Subsection 61-2b-6(2), it is unlawful  
 1417 for ~~[anyone]~~ a person to prepare, for valuable consideration, an appraisal, an appraisal report, a  
 1418 certified appraisal report, or perform a consultation service relating to real estate or real  
 1419 property in this state without first being licensed or certified in accordance with this chapter.

1420           (2) This section does not apply to:

1421           (a) a ~~[real estate broker]~~ principal broker, associate broker, or sales agent as defined by  
 1422 Section ~~[61-2-2]~~ 61-2f-102 licensed by this state who, in the ordinary course of the ~~[real estate]~~

1423 broker's or sales agent's business, gives an opinion:

1424 (i) regarding the value of real estate;

1425 (ii) to a potential seller or third party recommending a listing price of real estate; or

1426 (iii) to a potential buyer or third party recommending a purchase price of real estate;

1427 (b) an employee of a company who states an opinion of value or prepares a report

1428 containing value conclusions relating to real estate or real property solely for the company's

1429 use;

1430 (c) [~~any~~] an official or employee of a government agency while acting solely within the

1431 scope of the official's or employee's duties, unless otherwise required by Utah law;

1432 (d) an auditor or accountant who states an opinion of value or prepares a report

1433 containing value conclusions relating to real estate or real property while performing an audit;

1434 (e) an individual, except an individual who is required to be licensed or certified under

1435 this chapter, who states an opinion about the value of property in which the person has an

1436 ownership interest;

1437 (f) an individual who states an opinion of value if no consideration is paid or agreed to

1438 be paid for the opinion and no other party is reasonably expected to rely on the individual's

1439 appraisal expertise;

1440 (g) an individual, such as a researcher or a secretary, who does not render significant

1441 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,

1442 opinion, or conclusion; or

1443 (h) an attorney authorized to practice law in this state who, in the course of the

1444 attorney's practice, uses an appraisal report governed by this chapter or who states an opinion

1445 of the value of real estate.

1446 (3) An opinion of value or report containing value conclusions exempt under

1447 Subsection (2) may not be referred to as an appraisal.

1448 Section 26. Section **61-2b-6** is amended to read:

1449 **61-2b-6. Duties and powers of division.**

1450 (1) The division has the powers and duties listed in this Subsection (1).

1451 (a) The division shall:

1452 (i) receive an application for licensing, certification, or registration;

1453 (ii) establish appropriate administrative procedures for the processing of an application

1454 for licensure, certification, or registration;

1455 (iii) issue a license or certification to a qualified applicant pursuant to this chapter; and

1456 (iv) register an individual who applies and qualifies for registration as a trainee under  
1457 this chapter.

1458 (b) (i) The division shall require an individual to register with the division as a trainee  
1459 [~~with the division~~] before the individual acts in the capacity of a trainee earning experience for  
1460 licensure.

1461 (ii) Subject to Subsection (4), the board shall adopt rules in accordance with Title 63G,  
1462 Chapter 3, Utah Administrative Rulemaking Act, for:

1463 (A) the trainee registration required by this Subsection (1)(b); and

1464 (B) renewal of the trainee registration required by this Subsection (1)(b).

1465 (c) The division shall hold public hearings under the direction of the board.

1466 (d) The division may:

1467 (i) solicit bids and enter into contracts with one or more educational testing services or  
1468 organizations for the preparation of a bank of questions and answers [~~approved by the board for~~  
1469 ~~licensing and certification examinations~~]; and

1470 (ii) administer or contract for the administration of licensing and certification  
1471 examinations as may be required to carry out the division's responsibilities under this chapter.

1472 (e) The division shall provide administrative assistance to the board by providing to the  
1473 board the facilities, equipment, supplies, and personnel that are required to enable the board to  
1474 carry out the board's responsibilities under this chapter.

1475 [~~(f) The division shall assist the board in upgrading and improving the quality of the~~  
1476 ~~education and examinations required under this chapter.~~]

1477 [(g)] (f) The division shall assist the board in improving the quality of the continuing  
1478 education available to a person licensed [~~and~~], certified, or registered under this chapter.

1479 [(h)] (g) The division shall assist the board with respect to the proper interpretation or  
1480 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section  
1481 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this  
1482 chapter.

1483 [(i)] (h) The division shall establish fees in accordance with Section 63J-1-504:

1484 (i) for processing:



1485 [~~(A)~~ a trainee registration;]  
1486 [~~(B)~~] (A) an application for licensing [~~and~~], certification, or registration; and  
1487 [~~(C)~~] (B) approval of an expert witness; and  
1488 (ii) for [~~all other functions~~] any other function required or permitted by this chapter.  
1489 (i) If a person pays a fee or costs to the division with a negotiable instrument and the  
1490 negotiable instrument is not honored for payment:  
1491 (i) the transaction for which the payment is submitted is voidable by the division;  
1492 (ii) the division may reverse the transaction if payment of the applicable fee or costs is  
1493 not received in full; and  
1494 (iii) the person's license, certification, or registration is automatically suspended:  
1495 (A) beginning the day on which the payment is due; and  
1496 (B) ending the day on which payment is made in full.  
1497 (j) The division may:  
1498 (i) investigate a complaint against:  
1499 [~~(A)~~ a trainee;]  
1500 [~~(B)~~] (A) a person licensed [~~or~~], certified, or registered under this chapter; or  
1501 [~~(C)~~] (B) a person required to be licensed, certified, or registered under this chapter;  
1502 (ii) subpoena a witness;  
1503 (iii) subpoena the production of a book, paper, document, record, [~~or other paper~~]  
1504 contract, or evidence;  
1505 (iv) administer an oath; and  
1506 (v) take testimony and receive evidence concerning a matter within the division's  
1507 jurisdiction.  
1508 (k) The division may:  
1509 (i) promote research and conduct studies relating to the profession of real estate  
1510 appraising; and  
1511 (ii) sponsor real estate appraisal educational activities.  
1512 (l) The division shall adopt, with the concurrence of the board, rules for the  
1513 administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative  
1514 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this  
1515 state or of the United States.

1516 (m) The division shall employ an appropriate staff to investigate allegations that a  
1517 person required to be licensed, certified, or registered under this chapter fails to comply with  
1518 this chapter.

1519 (n) The division may employ other professional, clerical, and technical staff as may be  
1520 necessary to properly administer the work of the division under this chapter.

1521 (o) ~~[The division may]~~ (i) Upon request, the division shall make available~~[, at a~~  
1522 ~~reasonable cost determined by the division], either directly or through a third party,~~ a list of the  
1523 names and addresses of ~~[all]~~ the persons licensed, registered, or certified by the division under  
1524 this chapter ~~[to the extent the information is a public record under Title 63G, Chapter 2,~~  
1525 ~~Government Records Access and Management Act].~~

1526 (ii) A person who requests a list under this Subsection (1)(o) shall pay the costs  
1527 incurred by the division to make the list available.

1528 (2) (a) The division shall approve an expert witness who is not otherwise licensed or  
1529 certified under this chapter to appear in an administrative or judicial tax proceeding to provide  
1530 evidence related to the valuation of real property that is assessed by the State Tax Commission,  
1531 ~~[provided that]~~ if the:

1532 (i) approval is limited to a specific proceeding;

1533 (ii) approval is valid until the proceeding becomes final;

1534 (iii) applicant pays to the division an approval fee ~~[to]~~ set by the division in accordance  
1535 with Section 63J-1-504;

1536 (iv) applicant provides the applicant's name, address, occupation, and professional  
1537 credentials; and

1538 (v) applicant provides a notarized statement that:

1539 (A) the applicant is competent to render an appraisal and to testify as an expert witness  
1540 in the proceeding; and

1541 (B) the appraisal and testimony to be offered shall be in accordance with the Uniform  
1542 Standards of Professional Appraisal Practice adopted by the board.

1543 (b) Subsection (2)(a) ~~[is effective for]~~ applies to an administrative or judicial property  
1544 tax proceeding related to the valuation of real property that is assessed by the State Tax  
1545 Commission.

1546 (3) (a) If the conditions of Subsection (3)(b) are met, the division is immune from any

1547 civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act  
1548 of, or participating in a disciplinary proceeding concerning:

1549 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or  
1550 (ii) a person approved as an expert witness pursuant to this chapter.

1551 (b) This Subsection (3) applies if the division takes the action:

1552 (i) without malicious intent; and

1553 (ii) in the reasonable belief that the action is taken pursuant to the powers and duties  
1554 vested in the division under this chapter.

1555 (4) (a) An individual applying to register as a trainee under this chapter shall:

1556 (i) submit a fingerprint card in a form acceptable to the division at the time of applying  
1557 for registration; and

1558 (ii) consent to a criminal background check by:

1559 (A) the Utah Bureau of Criminal Identification; and

1560 (B) the Federal Bureau of Investigation.

1561 (b) The division shall request the Department of Public Safety to complete a Federal

1562 Bureau of Investigation criminal background check for an applicant through a national criminal  
1563 history system.

1564 (c) The applicant shall pay the cost of:

1565 (i) the fingerprinting required by this section; and

1566 (ii) the criminal background check required by this section.

1567 (d) (i) A registration as a trainee under this chapter is conditional pending completion  
1568 of the criminal background check required by this Subsection (4).

1569 (ii) ~~[If a criminal background check discloses that an applicant fails to accurately~~  
1570 ~~disclose a criminal history, the] A registration is immediately and automatically revoked[-] if a~~  
1571 criminal background check discloses that the applicant fails to accurately disclose a criminal  
1572 history involving:

1573 (A) the appraisal industry;

1574 (B) fraud;

1575 (C) misrepresentation; or

1576 (D) deceit.

1577 (iii) If a criminal background check discloses that an applicant fails to accurately

1578 disclose a criminal history other than one described in Subsection (4)(d)(ii), the division:

1579 (A) shall review the application; and

1580 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,

1581 Utah Administrative Rulemaking Act, may:

1582 (I) place one or more conditions on a registration;

1583 (II) place one or more restrictions on a registration;

1584 (III) revoke a registration; or

1585 (IV) refer the application to the board for a decision.

1586 ~~[(iii)]~~ (iv) An individual whose conditional registration is automatically revoked under  
1587 Subsection (4)(d)(ii) or whose registration is conditioned, restricted, or revoked under

1588 Subsection (4)(d)(iii) may appeal the ~~[revocation]~~ action in a hearing conducted by the board:

1589 (A) after the ~~[revocation]~~ action is taken; and

1590 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1591 ~~[(iv)]~~ (v) The board may delegate to the division or an administrative law judge the  
1592 authority to conduct a hearing described in Subsection (4)(d)~~[(iii)]~~(iv).

1593 ~~[(v)]~~ (vi) Relief from ~~[a]~~ an automatic revocation under Subsection (4)(d)(ii) may be  
1594 granted only if:

1595 (A) the criminal history upon which the division ~~[based]~~ bases the revocation:

1596 (I) did not occur; or

1597 (II) is the criminal history of another person;

1598 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

1599 (II) the applicant has a reasonable good faith belief at the time of application that there  
1600 was no criminal history to be disclosed; or

1601 (C) the division fails to follow the prescribed procedure for the revocation.

1602 (e) If a registration is revoked or a revocation is upheld after a hearing described in  
1603 Subsection (4)(d)~~[(iii)]~~(iv), the individual may not apply for a new ~~[license]~~ registration for a  
1604 period of 12 months after the day on which the registration is revoked.

1605 (f) The board may delegate to the division the authority to make a decision on whether  
1606 relief from a revocation should be granted.

1607 (g) ~~[The funds]~~ Money paid by an applicant for the cost of the criminal background  
1608 check ~~[shall be]~~ is nonlapsing.

1609 Section 27. Section **61-2b-8** is amended to read:

1610 **61-2b-8. Duties of board.**

1611 (1) (a) The board shall provide technical assistance to the division relating to real estate  
1612 appraisal standards and real estate appraiser qualifications.

1613 (b) The board has the powers and duties listed in this section.

1614 (2) The board shall:

1615 (a) determine the experience[;] and education[; ~~and examination~~] requirements  
1616 appropriate for a person licensed under this chapter;

1617 (b) determine the experience[;] and education[; ~~and examination~~] requirements  
1618 appropriate for a person certified under this chapter:

1619 (i) in compliance with the minimum requirements of Financial Institutions Reform,  
1620 Recovery, and Enforcement Act of 1989; and

1621 (ii) consistent with the intent of this chapter;

1622 (c) determine the appraisal related acts that may be performed by:

1623 (i) a trainee on the basis of the trainee's education and experience;

1624 (ii) clerical staff; and

1625 (iii) a person who:

1626 (A) does not hold a license or certification; and

1627 (B) assists an appraiser licensed or certified under this chapter in providing appraisal  
1628 services or consultation services;

1629 (d) determine the procedures for a trainee to register and to renew a registration with  
1630 the division; and

1631 (e) develop one or more programs to upgrade and improve the experience, education,  
1632 and examinations as required under this chapter.

1633 (3) (a) The experience[;] and education[; ~~and examination~~] requirements established by  
1634 the board for a person licensed or certified under this chapter shall be the minimum criteria  
1635 established by the [~~Appraiser~~] Appraisal Qualification Board [~~of the Appraisal Foundation~~],  
1636 unless, after notice and a public hearing held in accordance with Title 63G, Chapter 3, Utah  
1637 Administrative Rulemaking Act, the board finds that the minimum criteria are not appropriate  
1638 for a state-licensed appraiser or a state-certified appraiser in this state.

1639 (b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are

1640 not appropriate, the board shall recommend appropriate criteria to the Legislature.

1641 (4) The board shall:

1642 (a) determine the continuing education requirements appropriate for the renewal of a  
1643 license, certification, or registration issued under this chapter, except that the continuing  
1644 education requirements established by the board shall at least meet the minimum criteria  
1645 established by the Appraisal Qualification Board;

1646 (b) develop one or more programs to upgrade and improve continuing education; and

1647 (c) recommend to the division one or more available continuing education courses that  
1648 meet the requirements of this chapter.

1649 (5) (a) The board shall consider the proper interpretation or explanation of the Uniform  
1650 Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:

1651 (i) an interpretation or explanation is necessary in the enforcement of this chapter; and

1652 (ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an  
1653 interpretation or explanation.

1654 (b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the  
1655 division the appropriate interpretation or explanation that the division should adopt as a rule  
1656 under this chapter.

1657 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah  
1658 Administrative Rulemaking Act, and Section 61-2b-27 provide for an exemption from a  
1659 provision of the Uniform Standards of Professional Appraisal Practice for an activity engaged  
1660 in on behalf of a governmental entity.

1661 [~~(6) The board shall develop and establish or approve the examination specifications  
1662 and the minimum score required to pass an examination for licensure or certification.]~~

1663 [~~(7) The board may review the:]~~

1664 [~~(a) bank of questions and answers that comprise the examination for a person licensed  
1665 and certified under this chapter;]~~

1666 [~~(b) procedure that is established for selecting individual questions from the bank of  
1667 questions for use in each scheduled examination; and]~~

1668 [~~(c) questions in the bank of questions and the related answers to determine whether  
1669 they meet the examination specifications established by the board.]~~

1670 [~~(8)~~] (6) (a) The board shall conduct an administrative hearing, not delegated by the

1671 board to an administrative law judge, in connection with a disciplinary proceeding under  
1672 Sections 61-2b-30 and 61-2b-31 concerning:

1673 (i) a person required to be licensed, certified, or registered under this chapter; and

1674 (ii) the person's failure to comply with this chapter and the Uniform Standards of  
1675 Professional Appraisal Practice as adopted under Section 61-2b-27.

1676 (b) The board shall issue in an administrative hearing a decision that contains findings  
1677 of fact and conclusions of law.

1678 (c) When a determination is made that a person required to be licensed, certified, or  
1679 registered under this chapter has violated this chapter, the division shall implement disciplinary  
1680 action determined by the board.

1681 ~~[(9)]~~ (7) A member of the board is immune from a civil action or criminal prosecution  
1682 for a disciplinary proceeding concerning a person required to be registered, licensed, certified,  
1683 or approved as an expert under this chapter if the action is taken without malicious intent and  
1684 in the reasonable belief that the action taken was taken pursuant to the powers and duties  
1685 vested in a member of the board under this chapter.

1686 ~~[(10)]~~ (8) The board shall require and pass upon proof necessary to determine the  
1687 honesty, competency, integrity, and truthfulness of an applicant for:

1688 (a) original licensure, certification, or registration; and

1689 (b) renewal licensure ~~[or]~~, certification, or registration.

1690 Section 28. Section **61-2b-10** is amended to read:

1691 **61-2b-10. State-licensed appraiser -- Authority and qualifications.**

1692 (1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4  
1693 family residential units in this state having a transaction value permitted under the Financial  
1694 Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

1695 (2) A state-licensed appraiser is authorized to appraise vacant or unimproved land  
1696 having a transaction value permitted under the Financial Institutions Reform, Recovery, and  
1697 Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family  
1698 purposes or for which the highest and best use is 1-4 family purposes and subdivisions for  
1699 which a development analysis/appraisal is not necessary.

1700 (3) A state-licensed appraiser may not issue a certified appraisal report.

1701 (4) To qualify as a state-licensed appraiser, an applicant must:

- 1702 (a) be of good moral character;
- 1703 (b) demonstrate honesty, competency, integrity, and truthfulness;
- 1704 ~~[(b)]~~ (c) pass the licensing examination with a satisfactory score as determined by the
- 1705 ~~[board]~~ Appraisal Qualification Board;
- 1706 ~~[(c)]~~ (d) successfully complete not less than 150 classroom hours in courses of study
- 1707 ~~[approved by the board]~~ that relate to:
- 1708 (i) real estate appraisal;
- 1709 (ii) the Uniform Standards of Professional Appraisal Practice; and
- 1710 (iii) ethical rules to be observed by a real estate appraiser as required by Section
- 1711 61-2b-27; and
- 1712 ~~[(d)]~~ (e) possess the minimum number of hours of experience in real property appraisal
- 1713 as established by rule.
- 1714 (5) The courses of study under Subsection (4)~~[(c)]~~(d) shall be conducted by:
- 1715 (a) a college or university;
- 1716 (b) a community or junior college;
- 1717 (c) a real estate appraisal or real estate related organization;
- 1718 (d) a state or federal agency or commission;
- 1719 (e) a proprietary school;
- 1720 (f) a provider approved by a state certification and licensing agency; or
- 1721 (g) the Appraisal Foundation or its boards.
- 1722 ~~[(6) The board shall require and pass upon proof necessary to determine the honesty,~~
- 1723 ~~competency, integrity, and truthfulness of each applicant.]~~
- 1724 Section 29. Section **61-2b-14** is amended to read:
- 1725 **61-2b-14. State-certified residential appraiser -- Application.**
- 1726 (1) ~~[Each]~~ An applicant for certification as a residential appraiser shall provide to the
- 1727 division evidence of:
- 1728 (a) the applicant's good moral character, honesty, competency, integrity, and
- 1729 truthfulness;
- 1730 ~~[(a) of]~~ (b) completion of the certification examination with a satisfactory score as
- 1731 determined by the ~~[board]~~ Appraisal Qualification Board;
- 1732 ~~[(b) (i) of]~~ (c) (i) an associate degree or higher degree from an accredited:



- 1733 (A) college;
- 1734 (B) junior college;
- 1735 (C) community college; or
- 1736 (D) university; or
- 1737 (ii) ~~[of]~~ successfully passing a curriculum determined by rule of collegiate level subject
- 1738 matter courses from an accredited:
- 1739 (A) college;
- 1740 (B) junior college;
- 1741 (C) community college; or
- 1742 (D) university;
- 1743 ~~[(e) of]~~ (d) satisfactory completion of not less than 200 classroom hours in a
- 1744 curriculum:
- 1745 (i) of specific appraisal education determined by rule made by the board; and
- 1746 (ii) that includes a course in the Uniform Standards of Professional Practice or its
- 1747 equivalent that ~~[has been]~~ is approved by the Appraisal ~~[Qualifications]~~ Qualification Board ~~[of~~
- 1748 ~~the federal Appraisal Foundation authorized by Title XI of the Financial Institutions Reform,~~
- 1749 ~~Recovery, and Enforcement Act of 1989];~~
- 1750 ~~[(d) of]~~ (e) the minimum number of hours of experience in real property appraisal as
- 1751 established by rule; and
- 1752 ~~[(e) that]~~ (f) acquiring the experience required under Subsection ~~[(1)(d) was acquired]~~
- 1753 (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of
- 1754 the application for certification.
- 1755 (2) Upon request by the division, ~~[the]~~ an applicant shall make available to the division
- 1756 for examination:
- 1757 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year
- 1758 for which experience is claimed; and
- 1759 (b) a sample selected by the division of appraisal reports that the applicant has prepared
- 1760 in the course of the applicant's appraisal practice.
- 1761 (3) The classroom hours required by Subsection (1)~~[(e)]~~(d) shall be provided by:
- 1762 (a) a college or university;
- 1763 (b) a community or junior college;

1764 (c) a real estate appraisal or real estate related organization;  
 1765 (d) a state or federal agency or commission;  
 1766 (e) a proprietary school;  
 1767 (f) a provider approved by a state certification and licensing agency; or  
 1768 (g) the Appraisal Foundation or its boards.

1769 Section 30. Section **61-2b-15** is amended to read:  
 1770 **61-2b-15. State-certified general appraiser -- Application -- Qualifications.**  
 1771 (1) ~~Each~~ An applicant for certification as a general appraiser shall provide to the  
 1772 division evidence of:  
 1773 (a) the applicant's good moral character, honesty, competency, integrity, and  
 1774 truthfulness;  
 1775 ~~(a) of~~ (b) completion of the certification examination with a satisfactory score as  
 1776 determined by the ~~board~~ Appraisal Qualification Board;  
 1777 ~~(b)~~ (c) (i) ~~of~~ a bachelors degree or higher degree from an accredited college or  
 1778 university; or  
 1779 (ii) ~~of~~ successfully passing a curriculum determined by rule of collegiate level subject  
 1780 matter courses from an accredited:  
 1781 (A) college;  
 1782 (B) junior college;  
 1783 (C) community college; or  
 1784 (D) university;  
 1785 ~~(c) of~~ (d) satisfactory completion of not less than 300 classroom hours in a  
 1786 curriculum:  
 1787 (i) of specific appraisal education determined by rule; and  
 1788 (ii) that includes a course in the Uniform Standards of Professional Practice or its  
 1789 equivalent that has been approved by the Appraisal ~~Qualifications~~ Qualification Board ~~[of the~~  
 1790 ~~Appraisal Foundation authorized by Title XI of the Financial Institutions Reform, Recovery,~~  
 1791 ~~and Enforcement Act of 1989]~~;  
 1792 ~~(d) of~~ (e) the minimum number of hours of experience in real property appraisal as  
 1793 established by rule; and  
 1794 ~~(e) that~~ (f) acquiring the experience required under Subsection ~~[(1)(d) is acquired]~~

1795 (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of  
1796 the application for certification.

1797 (2) Upon request by the division, ~~the~~ an applicant shall make available to the division  
1798 for examination:

1799 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year  
1800 for which experience is claimed; and

1801 (b) a sample selected by the division of appraisal reports that the applicant has prepared  
1802 in the course of the applicant's appraisal practice.

1803 (3) The classroom hours required by Subsection (1)~~(c)~~(d) shall be provided by:

1804 (a) a college or university;

1805 (b) a community or junior college;

1806 (c) a real estate appraisal or real estate related organization;

1807 (d) a state or federal agency or commission;

1808 (e) a proprietary school;

1809 (f) a provider approved by a state certification and licensing agency; or

1810 (g) the Appraisal Foundation or its boards.

1811 Section 31. Section **61-2b-17** is amended to read:

1812 **61-2b-17. State-certified and state-licensed appraisers -- Restrictions on use of**  
1813 **terms -- Conduct prohibited or required -- Trainee.**

1814 (1) (a) The terms "state-certified general appraiser," "state-certified residential  
1815 appraiser," and "state-licensed appraiser":

1816 (i) may only be used to refer to an individual who is certified or licensed under this  
1817 chapter; and

1818 (ii) may not be used following, or immediately in connection with, the name or  
1819 signature of a firm, partnership, corporation, or group, or in any manner that it might be  
1820 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the  
1821 individual who is certified or licensed under this chapter.

1822 (b) The requirement of this Subsection (1) may not be construed to prevent a  
1823 state-certified general appraiser from signing an appraisal report on behalf of a corporation,  
1824 partnership, firm, or group practice if it is clear that:

1825 (i) only the individual is certified; and

1826 (ii) the corporation, partnership, firm, or group practice is not certified.

1827 (c) Except as provided in Section 61-2b-25, a certificate or license may not be issued  
1828 under this chapter to a corporation, partnership, firm, or group.

1829 (2) (a) A person other than a state-certified general appraiser or state-certified  
1830 residential appraiser, may not assume or use any title, designation, or abbreviation likely to  
1831 create the impression of certification in this state as a real estate appraiser.

1832 (b) A person other than a state-licensed appraiser may not assume or use any title,  
1833 designation, or abbreviation likely to create the impression of licensure in this state as a real  
1834 estate appraiser.

1835 (3) (a) Only an individual who has qualified under the certification requirements of this  
1836 chapter is authorized to prepare and sign a certified appraisal report relating to real estate or  
1837 real property in this state.

1838 (b) If a certified appraisal report is prepared and signed by a state-certified residential  
1839 appraiser, the certified appraisal report shall state, immediately following the signature on the  
1840 report, "State-Certified Residential Appraiser."

1841 (c) If a certified appraisal report is prepared and signed by a state-certified general  
1842 appraiser, the certified appraisal report shall state, immediately following the signature on the  
1843 report, "State-Certified General Appraiser."

1844 (d) An appraisal report prepared by a state-licensed appraiser shall state, immediately  
1845 following the signature on the report, "State-Licensed Appraiser."

1846 (e) When signing a certified appraisal report, a state-certified appraiser shall also place  
1847 on the report, immediately below the state-certified appraiser's signature the state-certified  
1848 appraiser's certificate number and its expiration date.

1849 (f) A state-certified residential appraiser may not prepare a certified appraisal report  
1850 outside the state-certified residential appraiser's authority as defined in Section 61-2b-13.

1851 (g) A state-licensed appraiser who assisted in the preparation of a certified appraisal  
1852 report is authorized to cosign the certified appraisal report.

1853 (4) A person who has not qualified under this chapter may not describe or refer to any  
1854 appraisal or appraisal report relating to real estate or real property in this state by the terms  
1855 "certified appraisal" or "certified appraisal report."

1856 (5) If a trainee assists [~~a state-licensed appraiser or~~] a state-certified appraiser in the

1857 preparation of an appraisal report, the appraisal report shall disclose:

- 1858 (a) the trainee's name; and
- 1859 (b) the extent to which the trainee assists in the preparation of the appraisal report.

1860 Section 32. Section **61-2b-18** is amended to read:

1861 **61-2b-18. Application for licensure, certification, or registration -- Approval as**  
1862 **an expert witness.**

1863 (1) An application for the following shall be sent to the division on a form approved by  
1864 the division:

- 1865 (a) original certification, licensure, or registration;
- 1866 (b) approval as an expert witness; and
- 1867 (c) renewal of certification [~~or~~], licensure, or registration.

1868 (2) The payment of the appropriate fee, as [~~fixed~~] established by the division, with the  
1869 concurrence of the board, in accordance with Section 63J-1-504, must accompany an  
1870 application for:

- 1871 (a) approval as an expert witness;
- 1872 (b) original certification, licensure, or registration; and
- 1873 (c) renewal of certification [~~or~~], licensure, or registration.

1874 (3) At the time of filing an application described in Subsection (1), an applicant shall:

1875 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal  
1876 Practice and the ethical rules to be observed by an appraiser that are established under Section  
1877 61-2b-27 for:

- 1878 (i) a certified or licensed appraiser;
- 1879 (ii) a trainee; or
- 1880 (iii) an expert witness approved under this chapter; and

1881 (b) certify that the applicant understands the types of misconduct, as set forth in this  
1882 chapter, for which a disciplinary proceeding may be initiated against a person certified,  
1883 licensed, or registered under this chapter.

1884 Section 33. Section **61-2b-19** is amended to read:

1885 **61-2b-19. Expiration of license, certification, or registration.**

1886 (1) [~~The~~] An initial license [~~or~~], certification, or registration issued under this chapter  
1887 expires on the expiration date indicated on the license [~~or~~], certificate, or registration.

1888 (2) A renewal license ~~[or]~~, certification, or registration issued under this chapter  
1889 expires two years from the date of issuance.

1890 (3) (a) The scheduled expiration date of ~~[the]~~ a license ~~[or]~~, certification, or registration  
1891 shall appear on the license ~~[or]~~, certification, or registration document ~~[and no other notice of~~  
1892 ~~its expiration need be given to its holder]~~.

1893 (b) The division is not required to provide a holder of a license, certification, or  
1894 registration notice of its expiration.

1895 Section 34. Section **61-2b-20** is amended to read:

1896 **61-2b-20. Renewal of license, certification, or registration.**

1897 ~~[(1) To obtain a renewal of a license or certification under this chapter, the holder of a~~  
1898 ~~current, valid license or certification shall, in compliance with procedures established by the~~  
1899 ~~division and the board, make application and pay the prescribed fee to the division before the~~  
1900 ~~expiration date of the license or certification.]~~

1901 ~~[(2) An application for renewal of a license or certification shall be accompanied by]~~

1902 (1) To renew a license, certification, or registration, before the license, certification, or  
1903 registration expires, the holder of the license, certification, or registration shall submit to the  
1904 division in compliance with procedures set by the division and the board:

1905 (a) an application for renewal;

1906 (b) a fee established by the division and the board, in accordance with Section  
1907 63J-1-504; and

1908 (c) evidence in the form prescribed by the division of having completed the continuing  
1909 education requirements for renewal specified in this chapter.

1910 ~~[(3)]~~ (2) (a) A license ~~[or]~~, certification, or registration expires if it is not renewed on or  
1911 before its expiration date.

1912 (b) For a period of 30 days after the expiration date, a license ~~[or]~~, certification, or  
1913 registration may be reinstated upon:

1914 (i) payment of a renewal fee and a late fee determined by the division and the board;  
1915 and

1916 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1917 (c) After the 30-day period described in Subsection ~~[(3)]~~ (2)(b), and until six months  
1918 after the expiration date, ~~[the]~~ a license ~~[or]~~, certification, or registration may be reinstated by:

- 1919 (i) paying a renewal fee and a reinstatement fee determined by the division and the  
1920 board; and
- 1921 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.
- 1922 (d) After the six-month period described in Subsection [~~(3)~~] (2)(c), and until one year  
1923 after the expiration date, ~~[the]~~ a license [or], certification, or registration may be reinstated by:
- 1924 (i) paying a renewal fee and a reinstatement fee determined by the division and the  
1925 board in accordance with Section 63J-1-504;
- 1926 (ii) providing proof acceptable to the division and the board of the person having  
1927 satisfied the continuing education requirements of Section 61-2b-40; and
- 1928 (iii) providing proof acceptable to the division and the board of the person completing  
1929 24 hours of continuing education:
- 1930 (A) in addition to the requirements in Section 61-2b-40; and
- 1931 (B) on a subject determined by the division by rule made in accordance with Title 63G,  
1932 Chapter 3, Utah Administrative Rulemaking Act.
- 1933 (e) The division shall relicense [~~or~~], recertify, or reregister a person who does not  
1934 renew that person's license [~~or~~], certification, or registration within one year after the expiration  
1935 date as prescribed for an original application.
- 1936 (f) Notwithstanding Subsection [~~(3)~~] (2)(a), the division may extend the term of a  
1937 license, certification, or registration that would expire under Subsection [~~(3)~~] (2)(a) except for  
1938 the extension if:
- 1939 (i) the person complies with the requirements of this section to renew the license,  
1940 certification, or registration; and
- 1941 (ii) at the time of the extension, there is pending under this chapter:
- 1942 (A) the application for renewal of the license, certification, registration; or
- 1943 (B) a disciplinary action.
- 1944 [~~(4)~~] (3) A person who is licensed, certified, or registered under this chapter shall  
1945 notify the division of the following by sending the division a signed statement within 10  
1946 business days of:
- 1947 (a) (i) a conviction of a criminal offense;
- 1948 (ii) the entry of a plea in abeyance to a criminal offense; or
- 1949 (iii) the potential resolution of a criminal case by:

1950 (A) a diversion agreement; or  
 1951 (B) any other agreement under which a criminal charge is suspended for a period of  
 1952 time;

1953 (b) filing a personal bankruptcy or business bankruptcy;

1954 (c) the suspension, revocation, surrender, cancellation, or denial of a professional  
 1955 license, certification, or registration of the person, whether the license, certification, or  
 1956 registration is issued by this state or another jurisdiction; or

1957 (d) the entry of a cease and desist order or a temporary or permanent injunction:

1958 (i) against the person by a court or [~~licensing~~] administrative agency; and

1959 (ii) on the basis of:

1960 (A) conduct or a practice involving an act regulated by this chapter; or

1961 (B) conduct involving fraud, misrepresentation, or deceit.

1962 Section 35. Section **61-2b-25** is amended to read:

1963 **61-2b-25. Other law unaffected.**

1964 [~~Nothing contained in this~~] This chapter [~~shall~~] may not be considered to prohibit a  
 1965 person approved, licensed, [~~or~~] certified, or registered under this chapter from engaging in the  
 1966 practice of real estate appraising as a professional corporation or a limited liability company in  
 1967 accordance with:

1968 (1) Title 16, Chapter 11, Professional Corporation Act; or

1969 (2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

1970 Section 36. Section **61-2b-28** is amended to read:

1971 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**

1972 (1) (a) The division may investigate the actions of:

1973 (i) a person registered, licensed, or certified under this chapter;

1974 (ii) an applicant for registration, licensure, or certification;

1975 (iii) an applicant for renewal of registration, licensure, or certification; or

1976 (iv) a person required to be registered, licensed, or certified under this chapter.

1977 (b) The division may initiate an agency action against a person described in Subsection

1978 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

1979 (i) impose disciplinary action;

1980 (ii) deny issuance to an applicant of:



- 1981 (A) an original registration, license, or certification; or  
1982 (B) a renewal of a registration, license, or certification; or  
1983 (iii) issue a cease and desist order as provided in Subsection (3).  
1984 (2) (a) The division may:  
1985 (i) administer an oath or affirmation;  
1986 (ii) subpoena a witness or evidence;  
1987 (iii) take evidence; and  
1988 (iv) require the production of a book, paper, contract, record, [~~other~~] document, [~~or~~]  
1989 information, or evidence relevant to the investigation described in Subsection (1).  
1990 (b) The division may serve a subpoena by certified mail.  
1991 (c) A failure to respond to a request by the division in an investigation authorized under  
1992 this chapter is considered to be a separate violation of this chapter, including:  
1993 (i) failing to respond to a subpoena as a witness;  
1994 (ii) withholding evidence; or  
1995 (iii) failing to produce a book, paper, contract, document, information, or record.  
1996 (d) (i) A person shall pay the costs incurred by the division to copy a book, paper,  
1997 contract, document, information, or record required under this chapter, including the costs  
1998 incurred to copy an electronic book, paper, contract, document, information, or record in a  
1999 universally readable format.  
2000 (ii) If a person fails to pay the costs described in Subsection (2)(d)(i), the person's  
2001 license, certification, or registration is automatically suspended:  
2002 (A) beginning the day on which the payment of costs is due; and  
2003 (B) ending the day on which the costs are paid.  
2004 (3) (a) The director shall issue and serve upon a person an order directing that person to  
2005 cease and desist from an act if:  
2006 (i) the director has reason to believe that the person has been engaging, is about to  
2007 engage, or is engaging in the act constituting a violation of this chapter; and  
2008 (ii) it appears to the director that it would be in the public interest to stop the act.  
2009 (b) Within 10 days after receiving the order, the person upon whom the order is served  
2010 may request a hearing.  
2011 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall

2012 remain in effect.

2013 (d) If a request for hearing is made, the division shall follow the procedures and  
2014 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

2015 (4) (a) After a hearing requested under Subsection (3), if the board agrees that an act of  
2016 the person violates this chapter, the board:

2017 (i) shall issue an order making the cease and desist order permanent; and

2018 (ii) may impose another disciplinary action under Section 61-2b-29.

2019 (b) The director shall commence an action in the name of the Department of  
2020 Commerce and Division of Real Estate, in the district court in the county in which an act  
2021 described in Subsection (3) occurs or where the person resides or carries on business, to enjoin  
2022 and restrain the person from violating this chapter if:

2023 (i) (A) a hearing is not requested under Subsection (3); and

2024 (B) the person fails to cease the act described in Subsection (3); or

2025 (ii) after discontinuing the act described in Subsection (3), the person again  
2026 commences the act.

2027 (5) A remedy or action provided in this section does not limit, interfere with, or prevent  
2028 the prosecution of another remedy or action, including a criminal proceeding.

2029 Section 37. Section **61-2b-29** is amended to read:

2030 **61-2b-29. Disciplinary action -- Grounds.**

2031 (1) (a) The board may order disciplinary action against a person:

2032 (i) registered, licensed, or certified under this chapter; or

2033 (ii) required to be registered, licensed, or certified under this chapter.

2034 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board  
2035 action may include:

2036 (i) revoking, suspending, or placing a person's registration, license, or certification on  
2037 probation;

2038 (ii) denying a person's original registration, license, or certification;

2039 (iii) denying a person's renewal license [~~or~~], certification, or registration;

2040 (iv) in the case of denial or revocation of a registration, license, or certification, setting  
2041 a waiting period for an applicant to apply for a registration, license, or certification under this  
2042 chapter;

- 2043 (v) ordering remedial education;
- 2044 (vi) imposing a civil penalty upon a person not to exceed the greater of:
- 2045 (A) [~~\$2,500~~] \$5,000 for each violation; or
- 2046 (B) the amount of any gain or economic benefit from a violation;
- 2047 (vii) issuing a cease and desist order;
- 2048 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board
- 2049 finds that the person complies with court ordered restitution; or
- 2050 (ix) doing any combination of Subsections (1)(b)(i) through (viii).
- 2051 (c) (i) If the board or division issues an order that orders a fine or educational
- 2052 requirements as part of the disciplinary action against a person, including a stipulation and
- 2053 order, the board or division shall state in the order the deadline by which the person shall
- 2054 comply with the fine or educational requirements.
- 2055 (ii) If a person fails to comply with a stated deadline:
- 2056 (A) the person's license, certificate, or registration is automatically suspended:
- 2057 (I) beginning on the day specified in the order as the deadline for compliance; and
- 2058 (II) ending the day on which the person complies in full with the order; and
- 2059 (B) if the person fails to pay a fine required by an order, the division shall begin a
- 2060 collection process:
- 2061 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,
- 2062 Utah Administrative Rulemaking Act; and
- 2063 (II) subject to Title 63A, Chapter 8, Office of State Debt Collection.
- 2064 (2) The following are grounds for disciplinary action under this section:
- 2065 (a) procuring or attempting to procure a registration, license, or certification under this
- 2066 chapter:
- 2067 (i) by fraud; or
- 2068 (ii) by making a false statement, submitting false information, or making a material
- 2069 misrepresentation in an application filed with the division;
- 2070 (b) paying money or attempting to pay money other than a fee provided for by this
- 2071 chapter to a member or employee of the division to procure a registration, license, or
- 2072 certification under this chapter;
- 2073 (c) an act or omission in the practice of real estate appraising that constitutes

- 2074 dishonesty, fraud, or misrepresentation;
- 2075       (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of
- 2076 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
- 2077       (e) a guilty plea to a criminal offense involving moral turpitude that is held in
- 2078 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
- 2079 contendere, of a criminal offense involving moral turpitude;
- 2080       (f) engaging in the business of real estate appraising under an assumed or fictitious
- 2081 name not properly registered in this state;
- 2082       (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
- 2083 chapter in connection with an appraisal of real estate or real property in this state;
- 2084       (h) making a false or misleading statement in:
- 2085       (i) that portion of a written appraisal report that deals with professional qualifications;
- 2086 or
- 2087       (ii) testimony concerning professional qualifications;
- 2088       (i) violating or disregarding:
- 2089       (i) ~~[a provision of]~~ this chapter;
- 2090       (ii) an order of the board; or
- 2091       (iii) a rule issued under this chapter;
- 2092       (j) violating the confidential nature of governmental records to which a person
- 2093 registered, licensed, certified, or approved as an expert under this chapter gained access
- 2094 through employment or engagement as an appraiser by a governmental agency;
- 2095       (k) accepting a contingent fee for performing an appraisal ~~[as defined in Subsection~~
- 2096 ~~61-2b-2(1)(a)]~~ if in fact the fee is or was contingent upon:
- 2097       (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;
- 2098       (ii) the analysis, opinion, conclusion, or valuation reached; or
- 2099       (iii) the consequences resulting from the appraisal assignment;
- 2100       (l) unprofessional conduct as defined by statute or rule;
- 2101       (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 2102       (i) providing a title insurance product or service without the approval required by
- 2103 Section 31A-2-405; or
- 2104       (ii) knowingly providing false or misleading information in the statement required by

2105 Subsection 31A-2-405(2); or

2106 (n) other conduct that constitutes dishonest dealing.

2107 Section 38. Section **61-2b-30.5** is amended to read:

2108 **61-2b-30.5. Reinstatement of license, certification, registration, approval --**

2109 **Expert witness -- Trainee.**

2110 (1) An individual [~~who has had a~~] whose license, certification, registration, or approval  
2111 is revoked under this chapter:

2112 (a) may not apply for renewal of that license, certification, registration, or approval;

2113 and

2114 (b) may apply for licensure, certification, registration, or approval as prescribed for an  
2115 original license [~~or~~], certification, registration, or approval subject to the limitations in  
2116 Subsection (2).

2117 (2) An applicant for licensure, certification, registration, or approval as an expert  
2118 witness under Subsection (1):

2119 (a) may not apply for licensure, certification, registration, or approval until at least five  
2120 years after the date of revocation of the applicant's original license, certification, registration, or  
2121 approval; and

2122 (b) is not entitled to credit for experience gained prior to the date of revocation in  
2123 determining whether the applicant meets the experience requirement for licensure, certification,  
2124 registration, or approval.

2125 (3) A person whose license or certification is revoked may not act as a trainee until at  
2126 least four years after the day on which the person's license or certification is revoked.

2127 Section 39. Section **61-2b-32** is amended to read:

2128 **61-2b-32. Registration, licensure, or certification prerequisite to suit for**  
2129 **compensation.**

2130 [~~No~~] A person engaged in the business of real estate appraising in this state or acting in  
2131 the capacity of a real estate appraiser in this state may not bring or maintain [~~any~~] an action [~~in~~  
2132 ~~any~~] as a plaintiff in a court of this state to collect compensation for the performance of real  
2133 estate appraisal services for which registration, licensure, or certification is required by this  
2134 chapter without alleging and proving that [~~he~~] the person was the holder of a valid registration,  
2135 license, or certification in this state at all times during the performance of [~~such~~] the real estate

2136 appraisal services.

2137 Section 40. Section **61-2b-33** is amended to read:

2138 **61-2b-33. Penalty for violating this chapter -- Automatic revocation.**

2139 (1) In addition to being subject to a disciplinary action by the board, a person required  
2140 to be licensed, certified, or registered under this chapter who violates this chapter:

2141 (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this  
2142 chapter; and

2143 (b) is guilty of a third degree felony, upon conviction of a second or subsequent  
2144 violation of this chapter.

2145 (2) A license [~~or~~], certification, or registration issued by the division to a person  
2146 convicted of a violation of Section 76-6-1203 is automatically revoked.

2147 Section 41. Section **61-2b-36** is amended to read:

2148 **61-2b-36. Contingent fees.**

2149 (1) A person licensed or certified under this chapter who enters into an agreement to  
2150 perform an appraisal [~~as defined in Subsection 61-2b-2(1)(a)~~] may not accept a contingent fee.

2151 (2) A person licensed or certified under this chapter who enters into an agreement to  
2152 provide consultation services [~~as defined in Subsection 61-2b-2(1)(f)(i)(A)~~] may be paid a  
2153 fixed fee or a contingent fee.

2154 (3) (a) If a person licensed or certified under this chapter enters into an agreement to  
2155 perform consultation services for a contingent fee, this fact shall be clearly stated in each oral  
2156 statement.

2157 (b) In addition to the requirements of Subsection (3)(a), if a person licensed or certified  
2158 under this chapter prepares a written consultation report or summary, letter of transmittal, or  
2159 certification statement for a contingent fee, the person shall clearly state in the report,  
2160 summary, letter of transmittal, or certification statement that the report is prepared under a  
2161 contingent fee arrangement.

2162 Section 42. Section **61-2b-39** is amended to read:

2163 **61-2b-39. Registration, licensure, or certification history.**

2164 The division may, upon payment of a fee [~~in an amount specified in rule~~] established by  
2165 the division in accordance with Section 63J-1-504, issue to [~~any~~] a person a verified [~~license~~]  
2166 history of:

2167 (1) ~~[any]~~ a person licensed ~~[or]~~, certified, or registered under this chapter; or  
2168 (2) ~~[any]~~ a person previously registered, licensed, or certified under this chapter.

2169 Section 43. Section **61-2b-40** is amended to read:

2170 **61-2b-40. Continuing education requirements.**

2171 (1) As a prerequisite to renewal of a license ~~[or]~~, certification, or registration, the  
2172 applicant for renewal shall present evidence satisfactory to the division of having met the  
2173 continuing education requirements of this section.

2174 (2) ~~[For any]~~ A person licensed ~~[or]~~, certified, or registered under this chapter~~[-the~~  
2175 ~~continuing education requirement for renewal of licensure or certification shall be the~~  
2176 ~~completion by the applicant,]~~ shall complete during the two-year period immediately preceding  
2177 the filing of an application for renewal~~[-of]~~ not less than 28 classroom hours of instruction in  
2178 courses or seminars that have received the approval of the ~~[board]~~ division.

2179 (3) The division may adopt rules for the implementation of this section to assure that  
2180 each person renewing that person's license ~~[or]~~, certification, or registration under this chapter  
2181 has a working knowledge of current real estate appraisal theories, practices, and techniques that  
2182 will enable the person to provide competent real estate appraisal services to the members of the  
2183 public with whom that person deals in a professional relationship under the authority of that  
2184 person's license ~~[or]~~, certificate, or registration.

2185 (4) An amendment or repeal of a rule adopted by the division under this section ~~[shall]~~  
2186 does not operate to deprive a person of credit toward renewal of that person's license ~~[or]~~,  
2187 certification, or registration for ~~[any]~~ a course of instruction that is successfully completed by  
2188 the applicant ~~[prior to]~~ before the date of the amendment or repeal of the rule.

2189 (5) In lieu of meeting the requirements set forth in Subsection (2) and applicable rules,  
2190 an applicant for renewal may satisfy all or part of the continuing education requirements that  
2191 are imposed by the board in excess of the minimum requirements of the Appraisal  
2192 Qualification Board by presenting evidence of the following:

2193 (a) completion of an educational program of study determined by the board to be  
2194 equivalent, for continuing education purposes, to courses or seminars approved by the board; or

2195 (b) participation other than as a student in educational processes and programs  
2196 approved by the board that relate to real property appraisal theory, practices, or techniques  
2197 including teaching, program development, and preparation of textbooks, monographs, articles,

2198 and other instructional materials.

2199 (6) The board shall develop and propose to the division rules [for the implementation  
2200 of this section to assure that a person who renews that person's license or certification has a  
2201 working knowledge of current real estate appraisal theories, practices, and techniques that will  
2202 enable the person to provide competent real estate appraisal services to the members of the  
2203 public with whom that person deals in a professional relationship under the authority of that  
2204 person's license or certification. ~~These rules~~ described in Subsection (3). The rules developed  
2205 and proposed by the board under this Subsection (6) shall prescribe:

2206 (a) policies and procedures to be followed in obtaining [~~board~~] division approval of  
2207 courses of instruction and seminars;

2208 (b) standards, policies, and procedures to be used by the division in evaluating an  
2209 applicant's claims of equivalency; and

2210 (c) standards, monitoring methods, and systems for recording attendance to be  
2211 employed by course and seminar sponsors as a prerequisite to division approval of courses and  
2212 seminars for credit.

2213 (7) (a) A person whose license [~~or~~], certification [~~has been~~], or registration is revoked  
2214 or suspended as the result of a disciplinary action taken by the board may not apply for  
2215 reinstatement unless the person presents evidence of completion of the continuing education  
2216 requirement that is [~~provided in~~] required by this chapter for renewal.

2217 (b) The continuing education required under Subsection (7)(a) [~~shall~~] may not be  
2218 imposed upon an applicant for reinstatement who has been required by the division to  
2219 successfully complete the examination for licensure or certification required by Section  
2220 61-2b-20 as a condition to reinstatement.

2221 Section 44. Section **61-2c-102** is amended to read:

2222 **61-2c-102. Definitions.**

2223 (1) As used in this chapter:

2224 [~~(a) "Affiliate" means a person who directly, or indirectly through one or more~~  
2225 ~~intermediaries, controls or is controlled by, or is under common control with, a specified~~  
2226 ~~individual or entity.]~~

2227 (a) "Affiliation" means that a mortgaged loan originator is associated with a principal  
2228 lending manager in accordance with Section 61-2c-209.



- 2229 (b) "Applicant" means a person applying for a license under this chapter.
- 2230 (c) "Approved examination provider" means a person approved by the nationwide  
2231 database as an approved test provider.
- 2232 (d) "Associate lending manager" means an individual who:
- 2233 (i) qualifies under this chapter as a principal lending manager; and
- 2234 (ii) works by or on behalf of another principal lending manager in transacting the  
2235 business of residential mortgage loans.
- 2236 (e) "Branch office" means a licensed entity's office:
- 2237 (i) for the transaction of the business of residential mortgage loans regulated under this  
2238 chapter;
- 2239 (ii) other than the main office of the licensed entity; and
- 2240 (iii) that operates under the same business name as the licensed entity.
- 2241 (f) (i) "Business of residential mortgage loans" means for compensation or in the  
2242 expectation of compensation to:
- 2243 (A) engage in an act that makes an individual a mortgage loan originator;
- 2244 (B) make or originate a residential mortgage loan;
- 2245 (C) directly or indirectly solicit a residential mortgage loan for another; or
- 2246 (D) unless excluded under Subsection (1)(f)(ii), render services related to the  
2247 origination of a residential mortgage loan including:
- 2248 (I) preparing a loan package;
- 2249 (II) communicating with the borrower and lender; or
- 2250 (III) advising on a loan term.
- 2251 (ii) "Business of residential mortgage loans" does not include:
- 2252 (A) if working as an employee under the direction of and subject to the supervision and  
2253 instruction of a person licensed under this chapter, the performance of a clerical or support duty  
2254 such as:
- 2255 (I) the receipt, collection, or distribution of information common for the processing or  
2256 underwriting of a loan in the mortgage industry other than taking an application;
- 2257 (II) communicating with a consumer to obtain information necessary for the processing  
2258 or underwriting of a residential mortgage loan;
- 2259 (III) word processing;

2260 (IV) sending correspondence; or  
2261 (V) assembling files;  
2262 (B) ownership of an entity that engages in the business of residential mortgage loans if  
2263 the owner does not personally perform the acts listed in Subsection (1)(f)(i); or  
2264 (C) except if an individual will engage in an activity as a loan mortgage originator,  
2265 acting in one or more of the following capacities:  
2266 (I) a loan wholesaler;  
2267 (II) an account executive for a loan wholesaler;  
2268 (III) a loan underwriter;  
2269 (IV) a loan closer; or  
2270 (V) funding a loan.  
2271 (g) "Certified education provider" means a person who is certified under Section  
2272 61-2c-204.1 to provide one or more of the following:  
2273 (i) Utah-specific prelicensing education; or  
2274 (ii) Utah-specific continuing education.  
2275 (h) "Closed-end" means a loan:  
2276 (i) with a fixed amount borrowed; and  
2277 (ii) that does not permit additional borrowing secured by the same collateral.  
2278 (i) "Commission" means the Residential Mortgage Regulatory Commission created in  
2279 Section 61-2c-104.  
2280 (j) "Compensation" means anything of economic value that is paid, loaned, granted,  
2281 given, donated, or transferred to an individual or entity for or in consideration of:  
2282 (i) services;  
2283 (ii) personal or real property; or  
2284 (iii) another thing of value.  
2285 (k) "Concurrence" means that entities given a concurring rule must jointly agree for the  
2286 action to be taken.  
2287 [~~(k)~~] (l) "Continuing education" means education taken by an individual licensed under  
2288 this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and  
2289 61-2c-205 to renew a license under this chapter.  
2290 [~~(l)~~] (m) "Control," as used in Subsection [~~(l)~~]~~(a)~~] 61-2c-105(2)(f), means the power to

2291 directly or indirectly:

2292 (i) direct or exercise a controlling interest over:

2293 (A) the management or policies of an entity; or

2294 (B) the election of a majority of the directors, officers, managers, or managing partners

2295 of an entity;

2296 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or

2297 (iii) vote more than 5% of a class of voting securities of an entity by another entity.

2298 (n) (i) "Control person" means an individual identified by an entity registered with the

2299 nationwide database as being the individual primarily responsible for directing the management

2300 or policies of the entity.

2301 (ii) "Control person" may include one of the following who is identified as provided in

2302 Subsection (1)(n)(i):

2303 (A) a manager;

2304 (B) a managing partner;

2305 (C) a director;

2306 (D) an executive officer; or

2307 (E) an individual who performs a function similar to an individual listed in this

2308 Subsection (1)(n)(ii).

2309 [~~(m)~~] (o) "Depository institution" is as defined in Section 7-1-103.

2310 [~~(n)~~] (p) "Director" means the director of the division.

2311 [~~(o)~~] (q) "Division" means the Division of Real Estate.

2312 [~~(p)~~] (r) "Dwelling" means a residential structure attached to real property that contains

2313 one to four units including any of the following if used as a residence:

2314 (i) a condominium unit;

2315 (ii) a cooperative unit;

2316 (iii) a manufactured home; or

2317 (iv) a house.

2318 [~~(q)~~] (s) "Entity" means:

2319 (i) a corporation;

2320 (ii) a limited liability company;

2321 (iii) a partnership;

- 2322 (iv) a company;
- 2323 (v) an association;
- 2324 (vi) a joint venture;
- 2325 (vii) a business trust;
- 2326 (viii) a trust; or
- 2327 (ix) another organization.

2328 ~~[(t)]~~ (t) "Executive director" means the executive director of the Department of  
 2329 Commerce.

2330 (u) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage  
 2331 Licensing, 12 U.S.C. Sec. 5101, et seq.

2332 ~~[(s)]~~ (v) "Inactive status" means a dormant status into which an unexpired license is  
 2333 placed when the holder of the license is not currently engaging in the business of residential  
 2334 mortgage loans.

2335 ~~[(t)]~~ (w) "Licensee" means a person licensed with the division under this chapter.

2336 ~~[(t)]~~ (x) "Licensing examination" means the examination required by Section  
 2337 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

2338 ~~[(v)]~~ (y) (i) Except as provided in Subsection (1)~~[(v)]~~(y)(ii), "mortgage loan originator"  
 2339 means an individual who for compensation or in expectation of compensation:

- 2340 (A) (I) takes a residential mortgage loan application; or
- 2341 ~~[(B)]~~ (II) offers or negotiates terms of a residential mortgage loan[-]; and
- 2342 (B) is licensed as a mortgage loan originator in accordance with this chapter.

2343 (ii) "~~[Loan]~~ Mortgage loan originator" does not include a person who:

2344 (A) is described in Subsection (1)~~[(v)]~~(y)(i), but who performs exclusively  
 2345 administrative or clerical tasks as described in Subsection (1)(f)(ii)(A);

2346 ~~[(B) unless compensated by a lender, a principal lending manager, or an agent of a~~  
 2347 ~~lender or principal lending manager:]~~

2348 ~~[(F) only performs real estate brokerage activities; and]~~

2349 ~~[(H) is licensed under Chapter 2, Division of Real Estate; and]~~

2350 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

2351 (II) performs only real estate brokerage activities; and

2352 (III) receives no compensation from;

- 2353            (Aa) a lender;
- 2354            (Bb) a principal lending manager; or
- 2355            (Cc) an agent of a lender or principal lending manager; or
- 2356            (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
- 2357 11 U.S.C. Sec. 101(53D).
- 2358            [~~(w)~~] "~~Mortgage officer~~" means an individual who is licensed with the division to
- 2359 transact the business of residential mortgage loans through a principal lending manager.]
- 2360            [~~(x)~~] (z) "Nationwide database" means the Nationwide Mortgage Licensing System and
- 2361 Registry, authorized under [~~Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.~~
- 2362 ~~Sec. 5101, et seq~~] federal licensing requirements.
- 2363            [~~(y)~~] (aa) "Nontraditional mortgage product" means a mortgage product other than a
- 2364 30-year fixed rate mortgage.
- 2365            [~~(z)~~] (bb) "Person" means an individual or entity.
- 2366            [~~(aa)~~] (cc) "Prelicensing education" means education taken by an individual seeking to
- 2367 be licensed under this chapter in order to meet the education requirements imposed by Section
- 2368 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.
- 2369            [~~(bb)~~] (dd) (i) "Principal lending manager" means an individual licensed as a principal
- 2370 lending manager under Section 61-2c-206 to transact the business of residential mortgage
- 2371 loans.
- 2372            (ii) An individual [~~licensed as~~] who is a principal lending manager may transact the
- 2373 business of residential mortgage loans as a mortgage [~~officer~~] loan originator.
- 2374            [~~(cc)~~] (ee) "Record" means information that is:
- 2375            (i) prepared, owned, received, or retained by a person; and
- 2376            (ii) (A) inscribed on a tangible medium; or
- 2377            (B) (I) stored in an electronic or other medium; and
- 2378            (II) [~~retrievable~~] in a perceivable and reproducible form.
- 2379            [~~(dd)~~] (ff) "Residential mortgage loan" means an extension of credit, if:
- 2380            (i) the loan or extension of credit is secured by a:
- 2381            (A) mortgage;
- 2382            (B) deed of trust; or
- 2383            (C) consensual security interest;

2384 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection  
2385 (1)~~(dd)~~(ff)(i):

2386 (A) is on a dwelling located in the state; and

2387 (B) is created with the consent of the owner of the residential real property; and

2388 (iii) solely for the purposes of defining "mortgage loan originator," the extension of  
2389 credit is primarily for personal, family, or household use.

2390 (gg) "Sponsorship" means an association in accordance with Section 61-2c-209  
2391 between an individual licensed under this chapter and an entity licensed under this chapter.

2392 ~~(ee)~~ (hh) "State" means:

2393 (i) a state, territory, or possession of the United States;

2394 (ii) the District of Columbia; or

2395 (iii) the Commonwealth of Puerto Rico.

2396 ~~(ff)~~ (ii) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

2397 (jj) "Utah-specific" means an educational or examination requirement under this  
2398 chapter that relates specifically to Utah.

2399 (2) (a) If a term not defined in this section is defined by rule, the term shall have the  
2400 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,  
2401 Utah Administrative Rulemaking Act.

2402 (b) If a term not defined in this section is not defined by rule, the term shall have the  
2403 meaning commonly accepted in the business community.

2404 Section 45. Section **61-2c-103** is amended to read:

2405 **61-2c-103. Powers and duties of the division.**

2406 (1) The division shall administer this chapter.

2407 (2) In addition to a power or duty expressly provided in this chapter, the division may:

2408 (a) receive and act on a complaint including:

2409 (i) taking action designed to obtain voluntary compliance with this chapter; or

2410 (ii) commencing an administrative or judicial proceeding on the division's own  
2411 initiative;

2412 (b) establish one or more programs for the education of consumers with respect to  
2413 residential mortgage loans;

2414 (c) (i) make one or more studies appropriate to effectuate the purposes and policies of

2415 this chapter; and

2416 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the  
2417 public;

2418 (d) visit and investigate a person licensed under this chapter, regardless of whether the  
2419 person is located in Utah; and

2420 (e) employ one or more necessary hearing examiners, investigators, clerks, and other  
2421 employees and agents.

2422 (3) The division shall make rules for the administration of this chapter in accordance  
2423 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:

2424 (a) licensure procedures for:

2425 (i) a person required by this chapter to obtain a license with the division; and

2426 (ii) the establishment of a branch office by an entity;

2427 (b) proper handling of [~~monies~~] money received by a licensee;

2428 (c) record-keeping requirements by a licensee, including proper disposal of a record;

2429 (d) certification procedures for certifying an education provider; and

2430 (e) standards of conduct for a licensee or certified education provider.

2431 (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah  
2432 Administrative Rulemaking Act, require as a condition of maintaining a license or certification  
2433 under this chapter that a person comply with a requirement of the nationwide database if:

2434 (a) required for uniformity amongst states; and

2435 (b) not inconsistent with this chapter.

2436 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah  
2437 Administrative Rulemaking Act, provide a process under which an individual may challenge  
2438 information contained in the nationwide database.

2439 [~~(6) The division may make available to the public a list of the names and mailing  
2440 addresses of licensees:]~~

2441 [~~(a) either directly or through a third party; and]~~

2442 [~~(b) at a reasonable cost.]~~

2443 [~~(7)] (6) The division shall annually:~~

2444 (a) review the requirements related to the nationwide database imposed by federal  
2445 [~~law~~] licensing requirements or the nationwide database on:

- 2446 (i) the division;
- 2447 (ii) a licensee under this chapter;
- 2448 (iii) a certified education provider; or
- 2449 (iv) an approved examination provider; and
- 2450 (b) after the review required by Subsection ~~[(7)]~~ (6)(a):

2451 (i) report to the Business and Labor Interim Committee the impact of the requirements  
 2452 on the implementation by the division of this chapter; and

2453 (ii) recommend legislation, if any, to the Business and Labor Interim Committee  
 2454 related to how the division should coordinate with the nationwide database.

2455 ~~[(8)]~~ (7) The division may enter into a relationship or contract with the nationwide  
 2456 database or another entity designated by the nationwide database to do the following related to  
 2457 a licensee or other person subject to this chapter:

- 2458 (a) collect or maintain a record; and
- 2459 (b) process a transaction fee or other fee.

2460 ~~[(9)]~~ (8) The division shall regularly report the following to the nationwide database:

- 2461 (a) a violation of this chapter;
- 2462 (b) disciplinary action under this chapter; and
- 2463 (c) other information relevant to this chapter.

2464 (9) If a person pays a fee or costs to the division with a negotiable instrument and the  
 2465 negotiable instrument is not honored for payment:

- 2466 (a) the transaction for which the payment is submitted is voidable by the division;
- 2467 (b) the division may reverse the transaction if payment of the applicable fee or costs is  
 2468 not received in full; and
- 2469 (c) the person's license, certification, or registration is automatically suspended:
  - 2470 (i) beginning the day on which the payment is due; and
  - 2471 (ii) ending the day on which payment is made in full.

2472 Section 46. Section **61-2c-104** is amended to read:

2473 **61-2c-104. Residential Mortgage Regulatory Commission.**

2474 (1) (a) There is created within the division the "Residential Mortgage Regulatory  
 2475 Commission" consisting of the following members appointed by the executive director with the  
 2476 approval of the governor:



2477 (i) four members who:  
2478 (A) have at least three years of experience in transacting the business of residential  
2479 mortgage loans; and  
2480 (B) are licensed under this chapter at the time of and during appointment; and  
2481 (ii) one member from the general public.  
2482 (b) (i) The executive director with the approval of the governor may appoint an  
2483 alternate member to the board.  
2484 (ii) The alternate member shall:  
2485 (A) at the time of the appointment, have at least three years of experience in transacting  
2486 the business of residential mortgage loans; and  
2487 (B) be licensed under this chapter at the time of and during appointment.  
2488 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint a  
2489 new member or reappointed member subject to appointment by the executive director to a  
2490 four-year term ending June 30.  
2491 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,  
2492 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
2493 of commission members are staggered so that approximately half of the commission is  
2494 appointed every two years.  
2495 (c) If a vacancy occurs in the membership of the commission for any reason, the  
2496 executive director shall appoint a replacement for the unexpired term.  
2497 (d) A member shall remain on the commission until the member's successor is  
2498 appointed and qualified.  
2499 (3) Members of the commission shall annually select one member to serve as chair.  
2500 (4) (a) The commission shall meet at least quarterly.  
2501 (b) The director may call a meeting in addition to the meetings required by Subsection  
2502 (4)(a):  
2503 (i) at the discretion of the director;  
2504 (ii) at the request of the chair of the commission; or  
2505 (iii) at the written request of three or more commission members.  
2506 (5) (a) Three members of the commission constitute a quorum for the transaction of  
2507 business.

2508 (b) If a quorum of members is unavailable for any meeting and an alternate member is  
2509 appointed to the commission by the executive director with the approval of the governor, the  
2510 alternate member shall serve as a regular member of the commission for that meeting if with  
2511 the presence of the alternate member there is a quorum present at the meeting.

2512 (c) The action of a majority of a quorum present is an action of the commission.

2513 (6) (a) (i) A member who is not a government employee may not receive compensation  
2514 or benefits for the member's services, but may receive per diem and expenses incurred in the  
2515 performance of the member's official duties at the rates established by the Division of Finance  
2516 under Sections 63A-3-106 and 63A-3-107.

2517 (ii) A member who is not a government employee may decline to receive per diem and  
2518 expenses for the member's service.

2519 (b) (i) A state government officer and employee member who does not receive salary,  
2520 per diem, or expenses from the member's agency for the member's service may receive per  
2521 diem and expenses incurred in the performance of the member's official duties from the  
2522 commission at the rates established by the Division of Finance under Sections 63A-3-106 and  
2523 63A-3-107.

2524 (ii) A state government officer and employee member may decline to receive per diem  
2525 and expenses for the member's service.

2526 (7) In addition to a duty or power expressly provided for elsewhere in this chapter, the  
2527 commission shall:

2528 (a) except as provided in Subsection 61-2c-202[~~(2)~~](3), concur in the licensure or  
2529 denial of licensure of a person under this chapter in accordance with Part 2, Licensure;

2530 (b) take disciplinary action with the concurrence of the director in accordance with Part  
2531 4, Enforcement; and

2532 (c) advise the division concerning matters related to the administration and  
2533 enforcement of this chapter.

2534 Section 47. Section **61-2c-105** is amended to read:

2535 **61-2c-105. Scope of chapter -- Exemptions.**

2536 (1) (a) Except as to an individual who will engage in an activity as a mortgage loan  
2537 originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien  
2538 or equivalent security interest on a dwelling.

2539 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer  
2540 Credit Code.

2541 (2) The following are exempt from this chapter:

2542 (a) the federal government;

2543 (b) a state;

2544 (c) a political subdivision of a state;

2545 (d) an agency of or entity created by a governmental entity described in Subsections

2546 (2)(a) through (c) including:

2547 (i) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing  
2548 Corporation Act;

2549 (ii) the Federal National Mortgage Corporation;

2550 (iii) the Federal Home Loan Mortgage Corporation;

2551 (iv) the Federal Deposit Insurance Corporation;

2552 (v) the Resolution Trust Corporation;

2553 (vi) the Government National Mortgage Association;

2554 (vii) the Federal Housing Administration;

2555 (viii) the National Credit Union Administration;

2556 (ix) the Farmers Home Administration; and

2557 (x) the United States Department of Veterans Affairs;

2558 (e) a depository institution;

2559 (f) an ~~affiliate of~~ entity that controls, is controlled by, or is under common control  
2560 with a depository institution;

2561 (g) an employee or agent of an entity described in Subsections (2)(a) through (f):

2562 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through  
2563 (f); and

2564 (ii) including an employee of:

2565 (A) a depository institution;

2566 (B) a subsidiary of a depository institution that is:

2567 (I) owned and controlled by the depository institution; and

2568 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or

2569 (C) an institution regulated by the Farm Credit Administration;

- 2570 (h) except as provided in Subsection (3), a person who:
- 2571 (i) makes a loan:
- 2572 (A) secured by an interest in real property;
- 2573 (B) with the person's own money; and
- 2574 (C) for the person's own investment; and
- 2575 (ii) that does not engage in the business of making loans secured by an interest in real
- 2576 property;
- 2577 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of
- 2578 trust, or consensual security interest on real property if the individual or entity:
- 2579 (i) is the seller of real property; and
- 2580 (ii) receives the mortgage, deed of trust, or consensual security interest on real property
- 2581 as security for a separate money obligation;
- 2582 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
- 2583 real property if:
- 2584 (i) the person receives the mortgage, deed of trust, or consensual security interest as
- 2585 security for an obligation payable on an installment or deferred payment basis;
- 2586 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing
- 2587 materials or services used in the improvement of the real property that is the subject of the
- 2588 mortgage, deed of trust, or consensual security interest; and
- 2589 (iii) the mortgage, deed of trust, or consensual security interest is created without the
- 2590 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or
- 2591 consensual security interest;
- 2592 (k) a nonprofit corporation that:
- 2593 (i) is exempt from paying federal income taxes;
- 2594 (ii) is certified by the United States Small Business Administration as a small business
- 2595 investment company;
- 2596 (iii) is organized to promote economic development in this state; and
- 2597 (iv) has as its primary activity providing financing for business expansion;
- 2598 (l) except as provided in Subsection (3), a court appointed fiduciary; or
- 2599 (m) an attorney admitted to practice law in this state:
- 2600 (i) if the attorney is not principally engaged in the business of negotiating residential

2601 mortgage loans; and

2602 (ii) when the attorney renders services in the course of the attorney's practice as an  
2603 attorney.

2604 (3) An individual who will engage in an activity as a mortgage loan originator is  
2605 exempt from this chapter only if the individual is an employee or agent exempt under  
2606 Subsection (2)(g).

2607 (4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may  
2608 not engage in conduct described in Section 61-2c-301 when transacting business of residential  
2609 mortgage loans.

2610 (b) If an attorney exempt from this chapter violates Subsection (4)(a), the attorney:

2611 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

2612 (ii) is subject to disciplinary action generally applicable to an attorney admitted to  
2613 practice law in this state.

2614 (c) If the division receives a complaint alleging an attorney exempt from this chapter is  
2615 in violation of Subsection (4)(a), the division shall forward the complaint to the Utah State Bar  
2616 for disciplinary action.

2617 (5) (a) An individual who is exempt under Subsection (2) or (3) may voluntarily obtain  
2618 a license under this chapter by complying with Part 2, Licensure.

2619 (b) An individual who voluntarily obtains a license pursuant to this Subsection (5)  
2620 shall comply with all the provisions of this chapter.

2621 Section 48. Section **61-2c-106** is amended to read:

2622 **61-2c-106. Addresses provided the division.**

2623 (1) (a) [~~In providing an address to the division under this chapter, a~~] A person shall  
2624 provide a physical location or street address when the person provides the nationwide database  
2625 an address required by the division.

2626 (b) The following when provided under this chapter is public information:

2627 (i) a business address; or

2628 (ii) a mailing address.

2629 (2) A licensee is considered to have received a notification that is mailed to the last  
2630 mailing address furnished to the [division] nationwide database by:

2631 (a) if the licensee is an individual, the individual; or

2632 (b) if the licensee is an entity, the principal lending manager of the entity.

2633 Section 49. Section **61-2c-201** is amended to read:

2634 **61-2c-201. Licensure required of person engaged in the business of residential**  
2635 **mortgage loans -- Mortgage loan originator -- Principal lending manager.**

2636 (1) Unless exempt from this chapter under Section 61-2c-105, a person may not  
2637 transact the business of residential mortgage loans without obtaining a license under this  
2638 chapter.

2639 (2) For purposes of this chapter, a person transacts business in this state if:

2640 (a) (i) the person engages in an act that constitutes the business of residential mortgage  
2641 loans; and

2642 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;  
2643 and

2644 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is  
2645 located in this state; or

2646 (b) a representation is made by the person that the person transacts the business of  
2647 residential mortgage loans in this state.

2648 (3) An individual who has an ownership interest in an entity required to be licensed  
2649 under this chapter is not required to obtain an individual license under this chapter unless the  
2650 individual transacts the business of residential mortgage loans.

2651 (4) Unless otherwise exempted under this chapter, licensure under this chapter is  
2652 required of both:

2653 (a) the individual who directly transacts the business of residential mortgage loans; and

2654 (b) if the individual transacts business as an employee or agent of an entity or  
2655 individual, the entity or individual for whom the employee or agent transacts the business of  
2656 residential mortgage loans.

2657 ~~[(5) (a) An individual licensed under this chapter may not engage in the business of~~  
2658 ~~residential mortgage loans on behalf of more than one entity at the same time.]~~

2659 ~~[(b) This Subsection (5) does not restrict the number of:]~~

2660 ~~[(i) different lenders a person may use as a funding source for residential mortgage~~  
2661 ~~loans; or]~~

2662 ~~[(ii) entities in which an individual may have an ownership interest, regardless of~~

2663 whether the entities are:]

2664 [~~(A) licensed under this chapter; or]~~

2665 [~~(B) exempt under Section 61-2c-105.]~~

2666 [~~(6) An individual licensed under this chapter may not transact the business of~~

2667 residential mortgage loans for the following at the same time:]

2668 [~~(a) an entity licensed under this chapter; and]~~

2669 [~~(b) an entity that is exempt from licensure under Section 61-2c-105.]~~

2670 [~~(7) A mortgage officer may not receive consideration for transacting the business of~~

2671 residential mortgage loans from any person or entity except the principal lending manager with

2672 whom the mortgage officer is licensed.]

2673 [~~(8) A mortgage officer shall conduct all business of residential mortgage loans:]~~

2674 [~~(a) through the principal lending manager with which the individual is licensed; and]~~

2675 [~~(b) in the business name under which the principal lending manager is authorized by~~

2676 the division to do business.]

2677 [~~(9)~~] (5) (a) If an entity that is [~~authorized by this chapter~~] licensed to transact the

2678 business of residential mortgage loans transacts the business of residential mortgage loans

2679 under an assumed business name, the entity shall in accordance with rules made by the

2680 division:

2681 (i) register the assumed name [~~with the division~~] under this chapter; and

2682 (ii) furnish [~~the division~~] proof that the assumed business name is filed with the

2683 Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting

2684 Business Under Assumed Name.

2685 (b) The division may charge a fee established in accordance with Section 63J-1-504 for

2686 registering an assumed name pursuant to this Subsection [~~(9)~~] (5).

2687 [~~(10) A licensee whose license is in inactive status may not transact the business of~~

2688 residential mortgage loans:]

2689 Section 50. Section **61-2c-202** is amended to read:

2690 **61-2c-202. Licensure procedures.**

2691 (1) To apply for licensure under this chapter an applicant shall in a manner provided by

2692 the division by rule:

2693 (a) if the applicant is an entity, submit [~~to the division~~] a licensure statement that:

- 2694 (i) lists any name under which the ~~[applicant]~~ entity will transact business in this state;
- 2695 (ii) lists the address of the principal business location of the ~~[applicant]~~ entity;
- 2696 ~~[(iii) if the applicant is an entity:]~~
- 2697 ~~[(A) lists]~~ (iii) identifies the principal lending manager of the entity; ~~[and]~~
- 2698 ~~[(B)]~~ (iv) contains the signature of the principal lending manager;
- 2699 ~~[(iv) demonstrates that the applicant meets the qualifications listed in Section~~
- 2700 ~~61-2e-203;]~~
- 2701 ~~[(v) if the applicant is an entity, lists:]~~
- 2702 ~~[(A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated~~
- 2703 ~~in the business of residential mortgage loans; and]~~
- 2704 ~~[(B) the history of any disciplinary action or adverse administrative action taken~~
- 2705 ~~against the entity by a regulatory agency; and]~~
- 2706 (v) identifies the one or more control persons for the entity;
- 2707 (vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise
- 2708 regulated in the business of residential mortgage loans;
- 2709 (vii) discloses any adverse administrative action taken by an administrative agency
- 2710 against:
- 2711 (A) the entity; or
- 2712 (B) any control person for the entity;
- 2713 (viii) discloses any history of criminal proceedings involving any control person for the
- 2714 entity; and
- 2715 ~~[(vi)]~~ (ix) includes any information required by the division by rule;
- 2716 (b) if the applicant is an individual~~[-, the applicant shall provide]:~~
- 2717 ~~[(i) (A) a fingerprint card in a form acceptable to the division; and]~~
- 2718 ~~[(B) consent to a criminal background check by:]~~
- 2719 ~~[(f) the Utah Bureau of Criminal Identification; and]~~
- 2720 (i) submit a licensure statement that identifies the entity with which the applicant is
- 2721 sponsored;
- 2722 (ii) authorize a criminal background check through the nationwide database accessing:
- 2723 (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to
- 2724 obtain information from the Utah Bureau of Criminal Identification; and



2725           ~~[(H)]~~ (B) the Federal Bureau of Investigation;

2726           ~~[(ii)]~~ (iii) submit evidence using a method approved by the division by rule of having

2727 successfully completed approved prelicensing education in accordance with Section

2728 61-2c-204.1;

2729           ~~[(iii)]~~ (iv) submit evidence using a method approved by the division by rule of having

2730 successfully passed [a] any required licensing examination in accordance with Section

2731 61-2c-204.1; and

2732           ~~[(iv) if the applicant will engage in an activity as a loan originator:]~~

2733           ~~[(A) the individual's unique identifier;]~~

2734           ~~[(B) any other evidence required by the division by rule demonstrating that the~~

2735 ~~individual has submitted the following to the nationwide database:]~~

2736           ~~[(F) a fingerprint card in a form acceptable to the nationwide database;]~~

2737           ~~[(H) consent to a criminal background check by:]~~

2738           ~~[(Aa) the Utah Bureau of Criminal Identification; and]~~

2739           ~~[(Bb) the Federal Bureau of Investigation; and]~~

2740           ~~[(Hh) information requested by the nationwide database regarding personal history and~~

2741 ~~experience including authorization for the nationwide database and division to obtain:]~~

2742           ~~[(Aa) an independent credit report obtained from a consumer reporting agency~~

2743 ~~described in 15 U.S.C. Sec. 1681 et seq.; and]~~

2744           ~~[(Bb) information related to an administrative, civil, or criminal finding of a~~

2745 ~~governmental jurisdiction; and]~~

2746           (v) submit evidence using a method approved by the division by rule of having

2747 successfully registered in the nationwide database, including paying a fee required by the

2748 nationwide database; and

2749           (c) pay to the division:

2750           (i) an application fee established by the division in accordance with Section 63J-1-504;

2751 and

2752           (ii) the reasonable expenses incurred by the division in processing the application for

2753 licensure[; including the costs incurred by the division under Subsection (4)].

2754           ~~[-(2) (a) The division shall issue a license to an applicant if the division, with the~~

2755 ~~concurrence of the commission, finds that the applicant:]~~

2756 ~~[(i) meets the qualifications of Sections 61-2c-203 and 61-2c-204.1; and]~~  
2757 ~~[(ii) complies with this section.]~~  
2758 (2) (a) Upon receiving an application, the division, with the concurrence of the  
2759 commission, shall determine whether the applicant:  
2760 (i) meets the qualifications for licensure; and  
2761 (ii) complies with this section.  
2762 (b) If the division, with the concurrence of the commission, determines that an  
2763 applicant meets the qualifications for licensure and complies with this section, the division  
2764 shall issue the applicant a license.  
2765 (c) If the division, with the concurrence of the commission, determines that the  
2766 division requires more information to make a determination under Subsection (2)(a), the  
2767 division may:  
2768 (i) hold the application pending further information about an applicant's criminal  
2769 background or history related to adverse administrative action in any jurisdiction; or  
2770 (ii) issue a conditional license:  
2771 (A) pending the completion of a criminal background check; and  
2772 (B) subject to suspension or revocation if the criminal background check reveals that  
2773 the applicant did not truthfully or accurately disclose on the licensing application a criminal  
2774 history or other history related to adverse administrative action.  
2775 ~~[(b)]~~ (3) (a) The commission may delegate to the division the authority to:  
2776 (i) review a class or category of application for an initial or renewed license;  
2777 (ii) determine whether an applicant meets the ~~[licensing criteria in Sections 61-2c-203~~  
2778 ~~and 61-2c-204.1]~~ qualifications for licensure;  
2779 (iii) conduct a necessary hearing on an application; and  
2780 (iv) approve or deny a license application without concurrence by the commission.  
2781 ~~[(c)]~~ (b) If the commission delegates to the division the authority to approve or deny an  
2782 application without concurrence by the commission and the division denies an application for  
2783 licensure, the applicant who is denied licensure may petition the commission for review of the  
2784 denial.  
2785 ~~[(d)]~~ (c) An applicant who is denied licensure under Subsection ~~[(2)]~~ (3)(b) may seek  
2786 agency review by the executive director only after the commission reviews the division's denial

2787 of the applicant's application.

2788 ~~[(3)]~~ (d) Subject to Subsection ~~[(2)(d)]~~(3)(c) and in accordance with Title 63G, Chapter  
2789 4, Administrative Procedures Act, an applicant who is denied licensure under this chapter may  
2790 submit a request for agency review to the executive director within 30 days following the day  
2791 on which the commission order denying the licensure is issued.

2792 ~~[(4)(a) The division shall request the Department of Public Safety to complete:]~~

2793 ~~[(i) for an applicant who will engage in an activity as a loan originator, a criminal  
2794 background check by the Utah Bureau of Criminal Identification; or]~~

2795 ~~[(ii) for an applicant who will not engage in an activity as a loan originator, a Federal  
2796 Bureau of Investigation criminal background check through a national criminal history system.]~~

2797 ~~[(b) An applicant shall pay the cost of:]~~

2798 ~~[(i) the fingerprinting required by this section; and]~~

2799 ~~[(ii) the criminal background check required by this section.]~~

2800 ~~[(c) The funds paid by an applicant for the cost of the criminal background check shall  
2801 be nonlapsing.]~~

2802 Section 51. Section **61-2c-203** is amended to read:

2803 **61-2c-203. General qualifications for licensure.**

2804 (1) To qualify for licensure under this chapter, ~~[an individual:]~~ a person shall  
2805 demonstrate through procedures established by rule made by the division in accordance with  
2806 Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

2807 ~~[(a) shall demonstrate:]~~

2808 ~~[(i)]~~ (a) financial responsibility;

2809 ~~[(ii)]~~ (b) good moral character, honesty, integrity, and truthfulness; and

2810 ~~[(iii)]~~ (c) the competence to transact the business of residential mortgage loans,  
2811 including general fitness such as to command the confidence of the community and to warrant  
2812 a determination that the ~~[individual]~~ person will operate honestly, fairly, and efficiently within  
2813 the purposes of this chapter[;].

2814 ~~[(b) except as provided in Subsection (3), may not have]~~

2815 (2) If an applicant is an individual, the applicant may not have:

2816 (a) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner  
2817 to, or resolved by diversion or its equivalent:

- 2818 (i) a felony involving an act of fraud, dishonesty, a breach of trust, or money  
2819 laundering; or
- 2820 (ii) a felony in the seven years preceding the day on which an application is submitted  
2821 to the division;
- 2822 [~~(iii) in the 10 years preceding the day on which an application is submitted to the~~  
2823 ~~division of;~~]
- 2824 [~~(A) a felony or class A misdemeanor involving moral turpitude; or]~~
- 2825 [~~(B) a crime in another jurisdiction that is the equivalent of a felony or class A~~  
2826 ~~misdemeanor involving moral turpitude;]~~
- 2827 [~~(iv)~~] (b) in the five years preceding the day on which an application is submitted to the  
2828 division, been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner  
2829 to, or resolved by diversion its equivalent:
- 2830 [~~(A)~~] (i) a class B or class C misdemeanor involving moral turpitude; or
- 2831 [~~(B)~~] (ii) a crime in another jurisdiction that is the equivalent of a class B or class C  
2832 misdemeanor involving moral turpitude;
- 2833 (c) [~~if the applicant will engage in an activity as a loan originator, may not have]~~ had a  
2834 license as a mortgage loan originator revoked by a governmental jurisdiction at any time;
- 2835 (d) [~~except as provided in Subsection (3), may not have]~~ had a license or registration  
2836 suspended, [~~revoked;~~] surrendered, canceled, or denied in the five years preceding the date the  
2837 individual applies for licensure if:
- 2838 (i) the registration or license is issued by this state or another jurisdiction; and
- 2839 (ii) the suspension, [~~revocation;~~] surrender, [~~probation, fine;~~] cancellation, or denial is  
2840 based on misconduct in a professional capacity that relates to moral character, honesty,  
2841 integrity, truthfulness, or the competency to transact the business of residential mortgage loans;
- 2842 (e) [~~except as provided in Subsection (3), may not have]~~ been the subject of a bar by  
2843 the Securities and Exchange Commission, the New York Stock Exchange, or the National  
2844 Association of Securities Dealers within the five years preceding the date the individual applies  
2845 for registration; [~~and~~] or
- 2846 (f) [~~may not have]~~ had a [~~temporary or~~] permanent injunction entered against the  
2847 individual:
- 2848 (i) by a court or [~~licensing~~] administrative agency; and

2849 (ii) on the basis of:

2850 (A) conduct or a practice involving the business of residential mortgage loans; or

2851 (B) conduct involving fraud, misrepresentation, or deceit.

2852 ~~[(2) To qualify for licensure under this chapter an entity may not have:]~~

2853 ~~[(a) any of the following individuals in management]~~

2854 (3) If an applicant is an entity, the applicant may not have a control person who fails to

2855 meet the requirements of Subsection ~~[(1)]~~ (2) for an individual ~~[who will engage in an activity~~

2856 as a loan originator:] applicant.

2857 ~~[(i) a manager or a managing partner;]~~

2858 ~~[(ii) a director;]~~

2859 ~~[(iii) an executive officer; or]~~

2860 ~~[(iv) an individual occupying a position or performing functions similar to those~~

2861 ~~described in Subsections (2)(a)(i) through (iii); or]~~

2862 ~~[(b) a principal lending manager who fails to meet the requirements of Subsection (1)~~

2863 ~~for an individual who will engage in an activity as a loan originator.]~~

2864 ~~[(3) (a) Notwithstanding the failure to meet the requirements of Subsections (1)(b)(iii);~~

2865 ~~(b)(iv), (d), (e), and (f) and except as provided in Subsection (3)(b), the division may permit a~~

2866 ~~person to be licensed under this chapter if the individual applicant or a person listed in~~

2867 ~~Subsection (2):]~~

2868 ~~[(i) fails to meet the requirements of Subsections (1)(b)(iii), (b)(iv), (d), (e), and (f);]~~

2869 ~~[(ii) otherwise meets the qualifications for licensure; and]~~

2870 ~~[(iii) provides evidence satisfactory to the division with the concurrence of the~~

2871 ~~commission that the individual applicant or person described in Subsection (2):]~~

2872 ~~[(A) is of good moral character;]~~

2873 ~~[(B) is honest;]~~

2874 ~~[(C) has integrity;]~~

2875 ~~[(D) is truthful; and]~~

2876 ~~[(E) has the competency to transact the business of residential mortgage loans.]~~

2877 ~~[(b) The division may not license an individual under this Subsection (3) if that~~

2878 ~~individual will engage in an activity as a loan originator.]~~

2879 Section 52. Section **61-2c-204.1** is amended to read:

2880           **61-2c-204.1. Education providers -- Education requirements -- Examination**  
2881 **requirements.**

2882           (1) As used in this section:

2883           (a) "Approved continuing education course" means a course of continuing education  
2884 that is approved by the nationwide database.

2885           (b) "Approved prelicensing education course" means a course of prelicensing education  
2886 that is approved by the nationwide database.

2887           (2) (a) A person may not provide Utah-specific prelicensing education or Utah-specific  
2888 continuing education if that person is not certified by the division under this chapter.

2889           (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2890 division shall make rules establishing:

2891           (i) certification criteria and procedures to become a certified education provider; and

2892           (ii) standards of conduct for a certified education provider.

2893           (c) In accordance with the rules described in Subsection (2)(b), the division shall

2894 certify a person to provide [~~one or more of the following:~~] the education described in

2895 Subsection (2)(a).

2896           [~~(i) prelicensing education; or~~]

2897           [~~(ii) continuing education.~~]

2898           (d) [~~The~~] (i) Upon request, the division shall make available to the public a list of the  
2899 names and addresses of certified education providers either directly or through a third party.

2900           (ii) A person who requests a list under this Subsection (2)(d) shall pay the costs  
2901 incurred by the division to make the list available.

2902           (e) In certifying [~~an~~] a person as a certified education provider, the division by rule  
2903 may:

2904           (i) distinguish between an individual instructor and an entity that provides education;

2905 or

2906           (ii) approve;

2907           (A) Utah-specific prelicensing education; or

2908           (B) Utah-specific continuing education courses.

2909           (3) (a) The division may not:

2910           (i) license an individual under this chapter as a mortgage [~~officer~~] loan originator who

2911 has not completed the prelicensing education required by this section:

2912 (A) before taking the one or more licensing [~~examination~~] examinations required by  
2913 Subsection (4); [~~and~~]

2914 (B) in the number of hours, not to exceed 90 hours, required by rule made by the  
2915 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[;  
2916 ~~except that the division shall require that a person who will engage in an activity as a loan  
2917 originator complete at least 20 hours of approved prelicensing education courses that include at  
2918 least:]; and~~

2919 [~~(F) three hours of federal law and regulation;~~]

2920 [~~(H) three hours of ethics that includes instruction on fraud, consumer protection, and  
2921 fair lending issues; and~~]

2922 [~~(H) two hours of training related to lending standards for the nontraditional mortgage  
2923 product marketplace;~~]

2924 (C) that includes the prelicensing education required by federal licensing regulations:

2925 (ii) subject to Subsection (6), renew a license of an individual who has not completed  
2926 the continuing education required by this section and Section 61-2c-205[~~;~~or]:

2927 (A) in the number of hours required by rule made by the division in accordance with  
2928 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

2929 (B) that includes the continuing education required by federal licensing regulations; or

2930 (iii) [~~the division may not~~] license an individual under this chapter as a principal  
2931 lending manager who has not completed the prelicensing education required by Section  
2932 61-2c-206 before taking the licensing examination required by Section 61-2c-206.

2933 (b) Subject to Subsection (3)(a) and with the concurrence of the division, the  
2934 commission shall determine:

2935 (i) except as provided in Subsection 61-2c-206(1)[~~(c)~~](b), the appropriate number of  
2936 hours of prelicensing education required to obtain a license;

2937 (ii) the subject matters of the prelicensing education required under this section and  
2938 Section 61-2c-206, including online education or distance learning options;

2939 (iii) the appropriate number of hours of continuing education required to renew a  
2940 license[~~;~~ ~~except that at a minimum the continuing education required for a person who engages  
2941 in an activity as a loan originator shall include at least eight hours annually of approved~~

2942 continuing education courses that include at least:]; and  
2943 [(A) three hours of federal law and regulations;]  
2944 [(B) two hours of ethics, that include instruction on fraud, consumer protection, and  
2945 fair lending issues; and]  
2946 [(C) two hours of training related to lending standards for the nontraditional mortgage  
2947 product marketplace; and]  
2948 (iv) the subject matter of courses the division may accept for continuing education  
2949 purposes.  
2950 (c) The commission may appoint a committee to make recommendations to the  
2951 commission concerning approval of prelicensing education and continuing education courses,  
2952 except that the commission shall appoint at least one member to the committee to represent  
2953 each association that represents a significant number of individuals licensed under this chapter.  
2954 (d) The division may by rule made in accordance with Title 63G, Chapter 3, Utah  
2955 Administrative Rulemaking Act, provide for the calculation of continuing education credits,  
2956 except that the rules shall be consistent with 12 U.S.C. Sec. 5105.  
2957 (4) (a) The division may not license an individual under this chapter unless that  
2958 individual first passes ~~[a licensing examination]~~ the one or more licensing examinations that:  
2959 (i) are adopted by the division in accordance with Title 63G, Chapter 3, Utah  
2960 Administrative Rulemaking Act;  
2961 (ii) meet the minimum federal licensing requirements; and  
2962 (iii) are administered by an approved examination provider.  
2963 (b) The commission, with the concurrence of the division, shall determine the  
2964 requirements for:  
2965 (i) a licensing examination that at least:  
2966 ~~[(A) includes the qualified written test developed by the nationwide database; and]~~  
2967 (A) meet the minimum federal licensing requirements; and  
2968 (B) tests knowledge of the:  
2969 (I) fundamentals of the English language;  
2970 (II) arithmetic;  
2971 (III) provisions of this chapter;  
2972 (IV) rules adopted under this chapter;



2973 (V) basic residential mortgage principles and practices; and  
 2974 (VI) any other aspect of Utah law the commission determines is appropriate; and  
 2975 (ii) a licensing examination required under Section 61-2c-206 that:  
 2976 [~~(A) includes the qualified written test developed by the nationwide database; and~~]  
 2977 (A) meets the requirements of Subsection (4)(b)(i); and  
 2978 (B) tests knowledge of the:  
 2979 (I) advanced residential mortgage principles and practices; and  
 2980 (II) other aspects of Utah law the commission, with the concurrence of the division,  
 2981 determines appropriate.

2982 (c) An individual who will engage in an activity as a mortgage loan originator, is not  
 2983 considered to have passed a licensing examination if that individual has not met the minimum  
 2984 competence requirements of 12 U.S.C. Sec. 5104(d)(3).

2985 (5) When reasonably practicable, the commission and the division shall make the  
 2986 [~~licensing examination, preclicensing education, and continuing education~~] Utah-specific  
 2987 education requirements described in this section available electronically through one or more  
 2988 distance education methods approved by the commission and division.

2989 (6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
 2990 the commission, with the concurrence of the division, shall make rules establishing procedures  
 2991 under which a licensee may be exempted from a Utah-specific continuing education  
 2992 [~~requirements~~] requirement:

2993 (i) for a period not to exceed four years; and  
 2994 (ii) upon a finding of reasonable cause.

2995 (b) An individual who engages in an activity as a mortgage loan originator may not  
 2996 under this Subsection (6) be exempted from the [~~eight hours of~~] minimum continuing  
 2997 education required under [~~Subsection (3)(b)(iii)~~] federal licensing regulations for an individual  
 2998 who engages in an activity as a mortgage loan originator.

2999 Section 53. Section **61-2c-205** is amended to read:

3000 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

3001 (1) (a) A license issued under this chapter [~~is valid for one year.~~] expires as follows:

3002 (i) for the calendar year the license is issued:

3003 (A) if the license is issued on or before October 31, the license expires on December 31

3004 of the same calendar year; and

3005 (B) if the license is issued on or after November 1, the license expires on December 31

3006 of the following calendar year; and

3007 (ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a

3008 license expires annually on December 31.

3009 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or  
3010 shortened by as much as one year to maintain or change a renewal cycle established by rule by  
3011 the division.

3012 (2) To renew a license, no later than the date the license expires, a licensee shall in a  
3013 manner provided by the division by rule:

3014 [~~(a) (i) file the renewal form required by the division; and]~~

3015 (a) file a renewal statement;

3016 [~~(ii)~~] (b) furnish the information required by Subsection 61-2c-202(1);

3017 (c) renew the licensee's registration with the nationwide database, including the  
3018 payment of a fee required by the nationwide database;

3019 [~~(b)~~] (d) pay a fee to the division established by the division in accordance with Section  
3020 63J-1-504; and

3021 [~~(c)~~] (e) if the licensee is an individual and the individual's license is in active status at  
3022 the time of application for renewal, submit proof [~~using forms approved by the division]~~ of  
3023 having completed during the year before application the continuing education required under  
3024 Section 61-2c-204.1.

3025 (3) (a) A licensee under this chapter shall notify the division [~~using the form required~~  
3026 ~~by the division]~~ in a manner provided by the division by rule within 10 days of the date on  
3027 which there is a change in:

3028 (i) a name under which the licensee transacts the business of residential mortgage loans  
3029 in this state;

3030 (ii) (A) if the licensee is an entity, the business location of the licensee; or

3031 (B) if the licensee is an individual, the home and business addresses of the individual;

3032 (iii) the principal lending manager of the entity;

3033 (iv) the entity with which an individual licensee is licensed to conduct the business of  
3034 residential mortgage loans; or

3035 (v) any other information that is defined as material by rule made by the division.

3036 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate  
3037 grounds for disciplinary action against a licensee.

3038 (c) The division may charge a fee established in accordance with Section 63J-1-504 for  
3039 processing a change that a licensee is required to report to the division under Subsection (3)(a).

3040 (4) A licensee shall notify the division by sending the division a signed statement  
3041 within 10 business days of:

3042 (a) (i) a conviction of a criminal offense;

3043 (ii) the entry of a plea in abeyance to a criminal offense; or

3044 (iii) the potential resolution of a criminal case by:

3045 (A) a diversion agreement; or

3046 (B) any other agreement under which a criminal charge is held in suspense for a period  
3047 of time;

3048 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business  
3049 of residential mortgage loans;

3050 (c) the suspension, revocation, surrender, cancellation, or denial of a professional  
3051 license or professional registration of the licensee, whether the license or registration is issued  
3052 by this state or another jurisdiction; or

3053 (d) the entry of a cease and desist order or a temporary or permanent injunction:

3054 (i) against the licensee by a court or licensing agency; and

3055 (ii) based on:

3056 (A) conduct or a practice involving the business of residential mortgage loans; or

3057 (B) conduct involving fraud, misrepresentation, or deceit.

3058 (5) (a) A license under this chapter expires if the licensee does not apply to renew the  
3059 license on or before the expiration date of the license.

3060 (b) [~~Within 30 calendar days after the expiration date, a~~] A licensee whose license has  
3061 expired may apply to reinstate the expired license, in a manner provided by the division by rule  
3062 by:

3063 (i) requesting reinstatement;

3064 ~~(i)~~ (ii) paying to the division a renewal fee and a late fee determined by the division  
3065 under Section 63J-1-504; and

3066 ~~[(ii) if the licensee is an individual and is applying to reinstate a license to active status,~~  
3067 ~~providing proof using forms approved by the division of having completed, during the year~~  
3068 ~~before application, the continuing education required under Section 61-2c-204.1.]~~

3069 ~~[(c) After the 30 calendar days described in Subsection (5)(b) and within six months~~  
3070 ~~after the expiration date, a licensee whose license has expired may apply to reinstate an expired~~  
3071 ~~license by:]~~

3072 ~~[(i) paying a renewal fee and a late fee determined by the division under Section~~  
3073 ~~63J-1-504;]~~

3074 ~~[(ii) if the licensee is an individual and is applying to reinstate a license to active status,~~  
3075 ~~providing proof using forms approved by the division of having completed, during the year~~  
3076 ~~before application, the continuing education required under Section 61-2c-204.1; and]~~

3077 ~~[(iii) in addition to the continuing education described in Subsection (5)(c)(ii),~~  
3078 ~~providing proof of completing an additional 12 hours of continuing education meeting the~~  
3079 ~~requirements of Section 61-2c-204.1.]~~

3080 ~~[(d) The division shall issue a license to a licensee whose license expires under this~~  
3081 ~~Subsection (5) for more than six months as if the licensee is a new applicant filing an~~  
3082 ~~application for an original license under Section 61-2c-202.]~~

3083 ~~[(e) Notwithstanding Subsection (5)(a), the division may extend the term of a license~~  
3084 ~~that would expire under Subsection (5)(a) except for the extension if:]~~

3085 ~~[(i) the person complies with the requirements of this section to renew the license; and]~~

3086 ~~[(ii) at the time of the extension, there is pending under this chapter:]~~

3087 ~~[(A) the application for renewal of the license; or]~~

3088 ~~[(B) a disciplinary action.]~~

3089 ~~[(6) The division may charge a fee established in accordance with Section 63J-1-504~~  
3090 ~~for processing a change that a licensee is required to report to the division under this section.]~~

3091 ~~(iii) reinstating the licensee's registration with the nationwide database, including the~~  
3092 ~~payment of a fee required by the nationwide database.~~

3093 Section 54. Section **61-2c-205.1** is amended to read:

3094 **61-2c-205.1. Transition to use of nationwide database.**

3095 (1) An individual not required to be licensed under this chapter as in effect on  
3096 December 31, 2010, who is required to be licensed under this chapter as in effect on January 1,

3097 2011, may not engage in the business of residential mortgage loans on or after January 1, 2011  
3098 without holding a license under this chapter.

3099 (2) An individual who applies for a license under this chapter on or after January 1,  
3100 2011, shall meet the requirements of this chapter as in effect on January 1, 2011.

3101 (3) (a) This Subsection (3) applies to a licensee who:

3102 (i) will engage in an activity as a mortgage loan originator on or after January 1, 2011;

3103 and

3104 (ii) holds an active license under this chapter on December 31, 2010.

3105 (b) A licensee shall comply with the requirements of this chapter as in effect on  
3106 January 1, 2011, by no later than January 1, 2011, in order to hold an active license on or after  
3107 January 1, 2011.

3108 (c) The license of a licensee that fails to comply with this section on or before January  
3109 1, 2011 becomes inactive on January 1, 2011 until:

3110 (i) the day on which the licensee complies with the requirements of this chapter; or

3111 (ii) the license expires.

3112 (4) (a) A license of an individual who will engage in an activity as a mortgage loan  
3113 originator that is inactive on December 31, 2010, terminates as of January 1, 2011 unless that  
3114 licensee provides on or before January 1, 2011, evidence satisfactory to the division that the  
3115 licensee has complied with the requirements for registration under the nationwide database.

3116 (b) The division may by rule, made in accordance with Title 63G, Chapter 3, Utah  
3117 Administrative Rulemaking Act, [~~proscribe~~] prescribe:

3118 (i) the "requirements for registration under the nationwide database" described in  
3119 Subsection (4)(a);

3120 (ii) the evidence required by this Subsection (4); and

3121 (iii) the procedure for submitting the evidence required by this Subsection (4).

3122 (5) The division may make rules in accordance with Title 63G, Chapter 3, Utah  
3123 Administrative Rulemaking Act, providing a process:

3124 (a) that is consistent with this section to transition the licensing of individuals engaged  
3125 in the business of residential mortgage loans to the license requirements under this chapter as  
3126 in effect on January 1, 2011; or

3127 (b) to suspend a requirement for holding a license under this chapter that is related to

3128 the nationwide database if:

3129 (i) the suspension is related to changes made to [~~Secure and Fair Enforcement for~~  
3130 ~~Mortgage Licensing, 12 U.S.C. Sec. 5105, et seq.,~~] federal licensing requirements on or after  
3131 January 1, 2009; and

3132 (ii) the suspension ends on or before December 31, 2011.

3133 (6) The division may report or provide recommendations to the Legislature regarding  
3134 changes, if any, that could be made to this chapter in response to changes made to the  
3135 nationwide database or under [~~Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.~~  
3136 ~~Sec. 5101, et seq.,~~] federal licensing requirements, including changes related to grandfathering.

3137 Section 55. Section **61-2c-206** is amended to read:

3138 **61-2c-206. Principal lending manager licenses.**

3139 (1) To qualify for licensure as a principal lending manager under this chapter, an  
3140 individual shall[~~, in addition to meeting~~]:

3141 (a) meet the standards in Section 61-2c-203[~~;~~];

3142 [~~(a) submit an application on a form approved by the division;~~]

3143 [~~(b) pay a fee determined by the division under Section 63J-1-504;~~]

3144 [~~(c) submit proof of having successfully completed~~]

3145 (b) successfully complete the following education:

3146 (i) mortgage loan originator prelicensing education as required by federal licensing  
3147 regulations; and

3148 (ii) 40 hours of Utah-specific prelicensing education for a principal lending manager  
3149 that is approved by the [commission] division under Section 61-2c-204.1;

3150 [~~(d) submit proof of having successfully completed~~]

3151 (c) successfully complete the following examinations:

3152 (i) the mortgage loan originator licensing examination as approved by the nationwide  
3153 database; and

3154 (ii) the principal lending manager licensing examination approved by the commission  
3155 under Section 61-2c-204.1;

3156 [~~(e)~~] (d) submit proof on a form approved by the division of three years of full-time  
3157 active experience as a mortgage [officer] loan originator licensed in any state in the five years  
3158 preceding the day on which the application is submitted[~~, or its equivalent as approved by the~~

3159 ~~commission; and~~];

3160 (e) submit an application in a manner established by the division by rule;

3161 (f) establish sponsorship with an entity licensed under this chapter;

3162 ~~[(f)] (g) if the individual is not [licensed under this chapter]~~ registered in the  
3163 nationwide database as a mortgage loan originator at the time of application, submit to the  
3164 criminal background check required by Subsection 61-2c-202(1)(b)[-]; and

3165 (h) pay a fee determined by the division under Section 63J-1-504.

3166 (2) A principal lending manager may not:

3167 (a) engage in the business of residential mortgage loans on behalf of more than one  
3168 entity at the same time[-]; or

3169 (b) be sponsored by more than one entity at the same time.

3170 Section 56. Section **61-2c-209** is enacted to read:

3171 **61-2c-209. Sponsorship -- Affiliation.**

3172 (1) (a) The division may not license an individual, and an individual licensed under this  
3173 chapter may not conduct the business of residential mortgage loans unless:

3174 (i) if licensed as a mortgage loan originator, the individual:

3175 (A) is sponsored by an entity licensed under this chapter; and

3176 (B) is affiliated with a principal lending manager; or

3177 (ii) if licensed as a principal lending manager, the individual is sponsored by an entity  
3178 licensed under this chapter.

3179 (b) The division may not license any entity and an entity licensed under this chapter  
3180 may not conduct the business of residential mortgage loans unless the entity:

3181 (i) sponsors a principal lending manager;

3182 (ii) identifies at least one control person for the entity; and

3183 (iii) provides a list of the mortgage loan originators sponsored by the entity.

3184 (2) (a) A mortgage loan originator's license automatically becomes inactive the day on  
3185 which:

3186 (i) the mortgage loan originator is not sponsored by an entity licensed under this  
3187 chapter;

3188 (ii) the license of the entity with which the mortgage loan originator is sponsored  
3189 becomes inactive or terminates;

3190 (iii) the mortgage loan originator is not affiliated with a principal lending manager; or  
3191 (iv) the license of the principal lending manager with whom the mortgage loan  
3192 originator is affiliated becomes inactive or terminates.

3193 (b) A principal lending manager's license automatically becomes inactive the day on  
3194 which:

3195 (i) the principal lending manager is not sponsored by an entity licensed under this  
3196 chapter; or

3197 (ii) the license of the entity with which the principal lending manager is sponsored  
3198 becomes inactive or terminates.

3199 (c) A entity licensed under this chapter automatically becomes inactive the day on  
3200 which the entity's sponsorship with its principal lending manager terminates.

3201 (3) (a) A person whose license is inactive may not transact the business of residential  
3202 mortgage loans.

3203 (b) To activate an inactive mortgage loan originator license, an individual shall:

3204 (i) provide evidence that the individual:

3205 (A) is sponsored by an entity that holds an active license under this chapter; and

3206 (B) is affiliated with a principal lending manager who holds an active license under this  
3207 chapter; and

3208 (ii) pay a fee to the division set in accordance with Section 63J-1-504.

3209 (c) To activate an inactive principal lending manager license, an individual shall:

3210 (i) provide evidence that the individual is sponsored by an entity that holds an active  
3211 license under this chapter; and

3212 (ii) pay a fee to the division set in accordance with Section 63J-1-504.

3213 (d) To activate an inactive license held by an entity, an entity shall:

3214 (i) provide evidence of the entity's sponsorship of a principal lending manager; and

3215 (ii) pay a fee to the division set in accordance with Section 63J-1-504.

3216 (4) (a) A mortgage loan originator shall conduct the business of residential mortgage  
3217 loans only:

3218 (i) through the principal lending manager with whom the individual is affiliated; and

3219 (ii) in the business name under which the principal lending manager is authorized by  
3220 the division to do business.



- 3221 (b) An individual licensed under this chapter may not:
- 3222 (i) engage in the business of residential mortgage loans on behalf of more than one
- 3223 entity at the same time;
- 3224 (ii) be sponsored by more than one entity at the same time;
- 3225 (iii) transact the business of residential mortgage loans for the following at the same
- 3226 time:
- 3227 (A) an entity licensed under this chapter; and
- 3228 (B) an entity that is exempt from licensure under Section 61-2c-105; or
- 3229 (iv) if the individual is a mortgage loan originator, receive consideration for transacting
- 3230 the business of residential mortgage loans from any person except the principal lending
- 3231 manager with whom the mortgage loan originator is affiliated.
- 3232 (c) This Subsection (4) does not restrict the number of:
- 3233 (i) different lenders a person may use as a funding source for a residential mortgage
- 3234 loan; or
- 3235 (ii) entities in which an individual may have an ownership interest, regardless of
- 3236 whether the entities are:
- 3237 (A) licensed under this chapter; or
- 3238 (B) exempt under Section 61-2c-105.
- 3239 (5) The division by rule made in accordance with Title 63G, Chapter 3, Utah
- 3240 Administrative Rulemaking Act, may make rules that:
- 3241 (a) define what constitutes:
- 3242 (i) affiliation; or
- 3243 (ii) sponsorship; and
- 3244 (b) provide procedures by which:
- 3245 (i) an individual who is licensed under this chapter may provide evidence of
- 3246 sponsorship by an entity that is licensed under this chapter;
- 3247 (ii) a mortgage loan originator may provide evidence of affiliation with a principal
- 3248 lending manager; and
- 3249 (iii) an entity licensed under this chapter may:
- 3250 (A) provide evidence of its sponsorship of a principal lending manager;
- 3251 (B) identify at least one control person for the entity; and

3252 (C) provide a list of the one or more mortgage loan originators that the entity sponsors.

3253 Section 57. Section **61-2c-301** is amended to read:

3254 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

3255 (1) A person transacting the business of residential mortgage loans in this state may

3256 not:

3257 (a) give or receive compensation or anything of value in exchange for a referral of  
3258 residential mortgage loan business;

3259 (b) charge a fee in connection with a residential mortgage loan transaction:

3260 (i) that is excessive; or

3261 (ii) if the person does not comply with Section 70D-2-305;

3262 (c) give or receive compensation or anything of value in exchange for a referral of  
3263 settlement or loan closing services related to a residential mortgage loan transaction;

3264 (d) do any of the following to induce a lender to extend credit as part of a residential  
3265 mortgage loan transaction:

3266 (i) make a false statement or representation;

3267 (ii) cause false documents to be generated; or

3268 (iii) knowingly permit false information to be submitted by any party;

3269 (e) give or receive compensation or anything of value, or withhold or threaten to  
3270 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in  
3271 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a  
3272 violation of this section for a licensee to withhold payment because of a bona fide dispute  
3273 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards  
3274 of Professional Appraisal Practice;

3275 (f) violate or not comply with:

3276 (i) this chapter;

3277 (ii) an order of the commission or division; or

3278 (iii) a rule made by the division;

3279 (g) fail to respond within the required time period to:

3280 (i) a notice or complaint of the division; or

3281 (ii) a request for information from the division;

3282 (h) make false representations to the division, including in a licensure statement;

3283 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,  
3284 engage in the business of residential mortgage loans with respect to the transaction if the  
3285 person also acts in any of the following capacities with respect to the same residential mortgage  
3286 loan transaction:

3287 (i) appraiser;

3288 (ii) escrow agent;

3289 (iii) real estate agent;

3290 (iv) general contractor; or

3291 (v) title insurance [~~agent~~] producer;

3292 (j) order a title insurance report or hold a title insurance policy unless the person  
3293 provides to the title insurer a copy of a valid, current license under this chapter;

3294 (k) engage in unprofessional conduct as defined by rule;

3295 (l) engage in an act or omission in transacting the business of residential mortgage  
3296 loans that constitutes dishonesty, fraud, or misrepresentation;

3297 (m) engage in false or misleading advertising;

3298 (n) (i) fail to account for [~~monies~~] money received in connection with a residential  
3299 mortgage loan;

3300 (ii) use [~~monies~~] money for a different purpose from the purpose for which the [~~monies~~  
3301 ~~are~~] money is received; or

3302 (iii) except as provided in Subsection (4), retain [~~monies~~] money paid for services if  
3303 the services are not performed;

3304 (o) fail, within 90 calendar days of a request from a borrower who has paid for an  
3305 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

3306 (p) engage in an act that is performed to:

3307 (i) evade this chapter; or

3308 (ii) assist another person to evade this chapter;

3309 (q) recommend or encourage default, delinquency, or continuation of an existing  
3310 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing  
3311 of a residential mortgage loan that will refinance all or part of the indebtedness;

3312 (r) in the case of the principal lending manager of an entity or a branch office of an  
3313 entity, fail to exercise reasonable supervision over the activities of:

- 3314 (i) unlicensed staff; and
- 3315 (ii) a mortgage ~~[officer]~~ loan originator who is ~~[licensed]~~ affiliated with the principal
- 3316 lending manager;
- 3317 (s) pay or offer to pay an individual who does not hold a license under this chapter for
- 3318 work that requires the individual to hold a license under this chapter;
- 3319 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 3320 (i) provide a title insurance product or service without the approval required by Section
- 3321 31A-2-405; or
- 3322 (ii) knowingly provide false or misleading information in the statement required by
- 3323 Subsection 31A-2-405(2); or
- 3324 (u) represent to the public that the person can or will perform any act of a mortgage
- 3325 loan originator if that person is not licensed under this chapter because the person is exempt
- 3326 under Subsection 61-2c-102(1)(f)(ii)(A), including through:
- 3327 (i) advertising;
- 3328 (ii) a business card;
- 3329 (iii) ~~[stationary]~~ stationery;
- 3330 (iv) a brochure;
- 3331 (v) a sign;
- 3332 (vi) a rate list; or
- 3333 (vii) other promotional item.
- 3334 (2) Whether or not the crime is related to the business of residential mortgage loans, it
- 3335 is a violation of this chapter for a licensee or a person who is a certified education provider to
- 3336 do any of the following with respect to a criminal offense that involves moral turpitude:
- 3337 (a) be convicted;
- 3338 (b) plead guilty or nolo contendere;
- 3339 (c) enter a plea in abeyance; or
- 3340 (d) be subjected to a criminal disposition similar to the ones described in Subsections
- 3341 (2)(a) through (c).
- 3342 (3) A principal lending manager does not violate Subsection (1)(r) if:
- 3343 (a) in contravention of the principal lending manager's written policies and
- 3344 instructions, an affiliated licensee of the principal lending manager violates:

- 3345 (i) this chapter; or
- 3346 (ii) rules made by the division under this chapter;
- 3347 (b) the principal lending manager established and followed reasonable procedures to
- 3348 ensure that affiliated licensees receive adequate supervision;
- 3349 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
- 3350 attempted to prevent or mitigate the damage;
- 3351 (d) the principal lending manager did not participate in or ratify the violation by an
- 3352 affiliated licensee; and
- 3353 (e) the principal lending manager did not attempt to avoid learning of the violation.
- 3354 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
- 3355 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage
- 3356 if the mortgage is not closed.

3357 Section 58. Section **61-2c-302** is amended to read:

3358 **61-2c-302. Record requirements.**

3359 (1) For the time period specified in Subsection (2), a licensee shall make or possess any

3360 record required for that licensee by a rule made by the division.

3361 (2) A licensee shall maintain in its possession a record described in Subsection (1) for

3362 four years from the last to occur of the following:

- 3363 (a) the final entry on a residential mortgage loan is made by that licensee;
- 3364 (b) if the residential mortgage loan is serviced by the licensee:
  - 3365 (i) the residential mortgage loan is paid in full; or
  - 3366 (ii) the licensee ceases to service the residential mortgage loan; or
- 3367 (c) if the residential mortgage loan is not serviced by the licensee, the residential
- 3368 mortgage loan is closed.

3369 (3) A licensee shall:

3370 (a) make available to the division for inspection and copying during normal business

3371 hours all records required to be maintained under this chapter; and

3372 (b) upon reasonable notice from the division to a licensee, produce all records

3373 described in Subsection (3)(a) that are related to an investigation being conducted by the

3374 division at the division office for inspection and copying by the division.

3375 (4) A licensee who is an entity shall maintain and produce for inspection by the

3376 division a current list of all individuals whose licenses are ~~[affiliated with]~~ sponsored by the  
3377 entity.

3378 (5) (a) A licensee who engages in an activity as a mortgage loan originator shall  
3379 maintain ~~[and produce for inspection by the division]~~ a report of condition submitted to the  
3380 nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day  
3381 on which the licensee submits the report of condition to the nationwide database.

3382 (b) Upon request by the division, a mortgage loan originator shall produce a report of  
3383 condition for inspection by the division.

3384 Section 59. Section **61-2c-401** is amended to read:

3385 **61-2c-401. Investigations.**

3386 (1) The division may investigate or cause to be investigated the actions of:

3387 (a) (i) a licensee;

3388 (ii) a person required to be licensed under this chapter; or

3389 (iii) the following with respect to an entity that is a licensee or an entity required to be  
3390 licensed under this chapter:

3391 (A) a manager;

3392 (B) a managing partner;

3393 (C) a director;

3394 (D) an executive officer; or

3395 (E) an individual who performs a function similar to an individual listed in this

3396 Subsection (1)(a)(iii);

3397 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or

3398 (ii) the following with respect to an entity that has applied for a license or renewal of  
3399 licensure under this chapter:

3400 (A) a manager;

3401 (B) a managing partner;

3402 (C) a director;

3403 (D) an executive officer; or

3404 (E) an individual who performs a function similar to an individual listed in this

3405 Subsection (1)(b)(ii); or

3406 (c) ~~[any individual or entity that]~~ a person who transacts the business of residential

3407 mortgage loans within this state.

3408 (2) In conducting investigations, records inspections, and adjudicative proceedings, the  
3409 division may:

3410 (a) administer an oath or affirmation;

3411 (b) subpoena witnesses and evidence;

3412 (c) take evidence;

3413 (d) require the production of [~~books, papers, contracts, records, other documents;~~] a  
3414 record or information relevant to an investigation; and

3415 (e) serve a subpoena by certified mail.

3416 (3) A failure to respond to a request by the division in an investigation authorized  
3417 under this chapter is considered as a separate violation of this chapter, including:

3418 (a) failing to respond to a subpoena;

3419 (b) withholding evidence; or

3420 (c) failing to produce [~~documents or records~~] a record.

3421 (4) The division may inspect and copy [~~all records~~] a record related to the business of  
3422 residential mortgage loans by a licensee under this chapter, regardless of whether the [~~records~~  
3423 ~~are~~] record is maintained at a business location in Utah, in conducting:

3424 (a) investigations of complaints; or

3425 (b) inspections of the [~~records~~] record required to be maintained under:

3426 (i) this chapter; or

3427 (ii) rules adopted by the division under this chapter.

3428 (5) (a) If a licensee maintains [~~the records~~] a record required by this chapter and the  
3429 rules adopted by the division under this chapter outside Utah, the licensee is responsible for all  
3430 reasonable costs, including reasonable travel costs, incurred by the division in inspecting [~~those~~  
3431 ~~records~~] the record.

3432 (b) Upon receipt of notification from the division that [~~records~~] a record maintained  
3433 outside Utah [~~are~~] is to be examined in connection with an investigation or an examination, the  
3434 licensee shall deposit with the division a deposit of \$500 to cover the division's expenses in  
3435 connection with the examination of the [~~records~~] record.

3436 (c) If the deposit described in Subsection (5)(b) is insufficient to meet the estimated  
3437 costs and expenses of examination of the [~~records~~] record, the licensee shall make an additional

3438 deposit to cover the estimated costs and expenses of the division.

3439 (d) (i) ~~[All deposits]~~ A deposit under this Subsection (5) shall be deposited in the  
3440 General Fund as a dedicated credit to be used by the division under Subsection (5)(a).

3441 (ii) The division, with the concurrence of the executive director, may use ~~[the deposit~~  
3442 ~~monies deposited in the General Fund under this Subsection (5)(d)]~~ a deposit as a dedicated  
3443 credit for the records inspection costs under Subsection (5)(a).

3444 (iii) A deposit under this Subsection (5) shall be refunded to the licensee to the extent it  
3445 is not used, together with an itemized statement from the division of all amounts it has used.

3446 (e) ~~[All deposits]~~ A deposit under this Subsection (5) ~~[shall be]~~ is nonlapsing.

3447 (6) Failure to deposit with the division a deposit required to cover the costs of  
3448 examination of ~~[records]~~ a record that ~~[are]~~ is maintained outside Utah shall result in automatic  
3449 suspension of a license until the deposit is made.

3450 (7) (a) A person shall pay the costs incurred by the division to copy a record required  
3451 under this chapter, including the costs incurred to copy an electronic record in a universally  
3452 readable format.

3453 (b) If a person fails to pay the costs described in Subsection (7)(a), the person's license  
3454 or certification is automatically suspended:

3455 (i) beginning the day on which the payment of costs is due; and

3456 (ii) ending the day on which the costs are paid.

3457 Section 60. Section **61-2c-402** is amended to read:

3458 **61-2c-402. Disciplinary action.**

3459 (1) Subject to the requirements of Section 61-2c-402.1, the commission, with the  
3460 concurrence of the division, may impose a sanction described in Subsection (2) against a  
3461 person if the person:

3462 (a) (i) is a licensee or person required to be licensed under this chapter; and

3463 (ii) violates this chapter; or

3464 (b) (i) is a certified education provider or person required to be certified to provide  
3465 prelicensing or continuing education under this chapter; and

3466 (ii) violates this chapter.

3467 (2) The commission, with the concurrence of the director, may against a person  
3468 described in Subsection (1):



- 3469 (a) impose an educational requirement;
- 3470 (b) impose a civil penalty against the individual or entity in an amount not to exceed
- 3471 the greater of:
- 3472 (i) [~~\$2,500~~] \$5,000 for each violation; or
- 3473 (ii) the amount equal to any gain or economic benefit derived from each violation;
- 3474 (c) deny an application for an original license;
- 3475 (d) do any of the following to a license under this chapter:
- 3476 (i) suspend;
- 3477 (ii) revoke;
- 3478 (iii) place on probation;
- 3479 (iv) deny renewal;
- 3480 (v) deny reinstatement; or
- 3481 (vi) in the case of a denial [~~or revocation~~] of a license or a suspension that extends to
- 3482 the expiration date of a license, set a waiting period for a person to apply for a license under
- 3483 this chapter;
- 3484 (e) issue a cease and desist order;
- 3485 (f) require the reimbursement of the division of costs incurred by the division related to
- 3486 the recovery, storage, or destruction of a record that the person disposes of in a manner that
- 3487 violates this chapter or a rule made under this chapter;
- 3488 (g) modify a sanction described in Subsections (2)(a) through (f) if the commission
- 3489 finds that the person complies with court ordered restitution; or
- 3490 (h) impose any combination of sanctions described in this Subsection (2).
- 3491 (3) (a) If the commission, with the concurrence of the division, issues an order that
- 3492 orders a fine or educational requirements as part of a disciplinary action against a person,
- 3493 including a stipulation and order, the commission shall state in the order the deadline by which
- 3494 the person shall comply with the fine or education requirements.
- 3495 (b) If a person fails to comply with a stated deadline:
- 3496 (i) the person's license or certificate is automatically suspended:
- 3497 (A) beginning the day specified in the order as the deadline for compliance; and
- 3498 (B) ending the day on which the person complies in full with the order; and
- 3499 (ii) if the person fails to pay a fine required by an order, the division shall begin a

3500 collection process:

3501 (A) established by the division by rule made in accordance with Title 63G, Chapter 3,  
3502 Utah Administrative Rulemaking Act; and

3503 (B) subject to Title 63A, Chapter 8, Office of State Debt Collection.

3504 (4) (a) A person whose license was revoked under this chapter before May 11, 2010,  
3505 may request that the revocation be converted to a suspension under this Subsection (4):

3506 (i) if the revocation was not as a result of a violation of Section 61-2c-301; and

3507 (ii) by filing a written request with the division.

3508 (b) Upon receipt of a request to convert a revocation under this Subsection (4), the  
3509 commission, with the concurrence of the director, shall determine whether to convert the  
3510 revocation.

3511 (c) The commission may delegate to the division the authority to make a decision on  
3512 whether to convert a revocation.

3513 (d) If the division, acting under Subsection (4)(c), denies a request to convert a  
3514 revocation, the person who requests the conversion may appeal the decision in a hearing  
3515 conducted by the commission:

3516 (i) after the division denies the request to convert the revocation; and

3517 (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3518 (e) The commission may delegate to the division or an administrative law judge the  
3519 authority to conduct a hearing described in Subsection (4)(d).

3520 Section 61. Section **61-2c-404** is amended to read:

3521 **61-2c-404. Civil actions.**

3522 (1) (a) A person who violates this chapter is liable for an additional penalty, as  
3523 determined by the court, of at least the amount the person received in consequence of a  
3524 violation of this chapter as:

3525 (i) commission;

3526 (ii) compensation; or

3527 (iii) profit.

3528 (b) A person aggrieved by a violation of this chapter may:

3529 (i) bring an action for a penalty described in Subsection (1)(a); and

3530 (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

3531 (2) A person who is not licensed under this chapter at the time of an act or service that  
 3532 requires a license under this chapter may not bring an action in court for the recovery of a  
 3533 commission, fee, or compensation for that act or service.

3534 (3) (a) A mortgage ~~[officer]~~ loan originator may not bring an action in the mortgage  
 3535 ~~[officer's]~~ loan originator's own name for the recovery of a fee, commission, or compensation  
 3536 for transacting the business of residential mortgage loans unless the action is brought against  
 3537 the principal lending manager with whom the mortgage ~~[officer]~~ loan originator is licensed at  
 3538 the time of the act or service that is the subject of the action.

3539 (b) An action by an entity for the recovery of a fee, commission, or other compensation  
 3540 shall be brought by:

3541 (i) an entity; or

3542 (ii) the principal lending manager of an entity on behalf of the entity.

3543 (4) A principal lending manager who transacts the business of residential mortgage  
 3544 loans on the principal lending manager's own behalf may sue in the principal lending manager's  
 3545 own name for the recovery of a fee, commission, or compensation for transacting the business  
 3546 of residential mortgage loans.

3547 Section 62. Section **61-2c-501** is amended to read:

3548 **61-2c-501. Fund created.**

3549 (1) ~~[(a)]~~ There is created a restricted special revenue fund known as the "Residential  
 3550 Mortgage Loan Education, Research, and Recovery Fund."

3551 ~~[(b) As used in this part, "fund" means the Residential Mortgage Loan Education,  
 3552 Research, and Recovery Fund.]~~

3553 (2) The interest earned on the fund shall be deposited into the fund.

3554 (3) ~~[(a)]~~ At the beginning of each ~~[state]~~ fiscal year, the division shall make available  
 3555 \$100,000 ~~[shall remain available]~~ in the fund to satisfy final judgments rendered against a  
 3556 person licensed under this chapter.

3557 ~~[(b) For purposes of this part, a "judgment" includes a criminal restitution judgment.]~~

3558 Section 63. Section **61-2c-501.5** is enacted to read:

3559 **61-2c-501.5. Definitions.**

3560 As used in this part:

3561 (1) "Civil judgment" means a judgment in a civil action that:

3562 (a) is awarded in an action brought against a real estate licensee on the basis of fraud,  
3563 misrepresentation, or deceit in a residential mortgage loan transaction; and

3564 (b) awards actual damages.

3565 (2) "Criminal restitution judgment" means a judgment that, in accordance with the  
3566 Utah Code of Criminal Procedure, orders criminal restitution to a person and against a real  
3567 estate licensee for a criminal offense involving fraud, misrepresentation, or deceit in a  
3568 residential mortgage loan transaction.

3569 (3) "Final judgment" means one of the following judgments upon termination of the  
3570 proceedings related to the judgment, including appeals:

3571 (a) a civil judgment; or

3572 (b) a criminal restitution judgment.

3573 (4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery  
3574 Fund created in Section 61-2c-501.

3575 Section 64. Section **61-2c-502** is amended to read:

3576 **61-2c-502. Additional license fee.**

3577 (1) An individual who applies for or renews a license shall pay, in addition to ~~the~~  
3578 ~~application or renewal fee~~ any other fee required under this chapter, a reasonable annual fee:

3579 (a) determined by the division with the concurrence of the commission; and

3580 (b) not to exceed \$18.

3581 (2) ~~(a)~~ An entity that applies for or renews an entity license shall pay, in addition to  
3582 ~~the application or renewal fee~~ any other fee required under this chapter, a reasonable annual  
3583 fee:

3584 ~~(a)~~ (i) determined by the division with the concurrence of the commission; and

3585 ~~(b)~~ (ii) not to exceed \$25.

3586 (b) This Subsection (2) applies:

3587 (i) notwithstanding that an entity is operating under an assumed name registered with  
3588 the division as required by Subsection 61-2c-201(9); and

3589 (ii) to each branch office of an entity that is licensed under this chapter.

3590 (3) Notwithstanding Section 13-1-2, the following shall be paid into the fund to be  
3591 used as provided in this part:

3592 (a) a fee provided in this section;

3593 (b) a fee for certifying:

3594 (i) a school as a certified education provider;

3595 (ii) a prelicensing or continuing education course; or

3596 (iii) a prelicensing or continuing education provider as an instructor; and

3597 (c) a civil penalty imposed under this chapter.

3598 (4) If the balance in the fund that is available to satisfy a judgment against a licensee  
3599 decreases to less than \$100,000, the division may make an additional assessment to a licensee  
3600 to maintain the balance available at \$100,000 to satisfy judgments.

3601 Section 65. Section **61-2c-503** is amended to read:

3602 **61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud,**  
3603 **misrepresentation, or deceit -- Verified petition for order directing payment from fund --**  
3604 **Limitations and procedure.**

3605 (1) [~~(a) Subject to Subsection (6), a~~] A person may bring a claim against the fund if  
3606 [the person sends a signed notification to the division at the time the person files an action: (i)  
3607 against a licensee; and (ii)]:

3608 (a) the person obtains a final judgement;

3609 (b) the person complies with the requirements under this part;

3610 (c) the person is not substantially complicit in the fraud, misrepresentation, or deceit  
3611 that is the basis of the claim; and

3612 (d) the final judgment that is the basis for the claim:

3613 (i) has not been discharged in bankruptcy; and

3614 (ii) when a bankruptcy proceeding is open or commenced during the pendency of the  
3615 claim, the person obtains an order from the bankruptcy court declaring the final judgment and  
3616 related debt to be nondischargeable.

3617 (2) (a) A person may not bring a claim against the fund for money owed under a civil  
3618 judgment unless, within 10 business days of the day on which the person brings the civil action  
3619 that results in the civil judgment, the person sends to the division a signed notification alleging  
3620 fraud, misrepresentation, or deceit.

3621 (b) Within 30 calendar days [~~of receipt of the notice described in Subsection (1)(a);~~] of  
3622 the day on which the division receives a notice under Subsection (1), the division may  
3623 intervene in the action.

3624 ~~[(c) If a person making a claim against the fund obtains a final judgment in a court of~~  
3625 ~~competent jurisdiction in Utah against a licensee based on fraud, misrepresentation, or deceit in~~  
3626 ~~a residential mortgage loan transaction, the person making the claim may, upon termination of~~  
3627 ~~all proceedings including appeals;]~~

3628 (3) (a) After obtaining a final judgment, to file a claim against the fund, a person shall:

3629 (i) file a verified petition in the court where the ~~final~~ judgment ~~[was]~~ is entered ~~[for]~~  
3630 seeking an order directing payment from the fund ~~[for]~~ of an amount equal to the uncollected  
3631 actual damages ~~[included in the judgment:]~~ owed under the final judgment that are unpaid;

3632 (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the  
3633 division; and

3634 (iii) file a copy of the affidavit of service of the verified petition with the court.

3635 ~~[(d)]~~ (b) A recovery from the fund may not include:

3636 (i) punitive damages[;];

3637 (ii) attorney fees;

3638 (iii) interest[;]; or

3639 (iv) court costs.

3640 ~~[(e)]~~ (c) Regardless of the number of claimants or number of loans involved in a  
3641 transaction, the liability of the fund may not exceed:

3642 (i) \$15,000 for a single transaction;

3643 (ii) \$45,000 for an individual licensee; or

3644 (iii) \$45,000 for an entity.

3645 ~~[(2) A person making a claim against the fund shall:]~~

3646 ~~[(a) serve a copy of the petition on the division; and]~~

3647 ~~[(b) file a copy of the affidavit of the service of the petition described in Subsection~~  
3648 ~~(2)(a) with the court.]~~

3649 ~~[(3)(a) The]~~ (4) A court shall conduct a hearing on ~~[the]~~ a petition ~~[within 30 calendar~~  
3650 ~~days after service]~~ filed under Subsection (3) as scheduled by the court.

3651 ~~[(b) The petitioner shall recover from the fund only if the petitioner shows:]~~

3652 ~~[(i) that the petitioner is not:]~~

3653 (5) Subject to Subsection (6), a court may order payment from the fund under this  
3654 section only if the person who files the petition shows that the person:

3655 (a) is not:

3656 [~~(A)~~] (i) in the case of a civil judgment, the spouse of the judgment debtor; [or]

3657 (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or

3658 [~~(B) the~~] (iii) a personal representative of [the spouse of the judgment debtor] an

3659 individual described in Subsection (5)(a)(i) or (ii);

3660 [~~(ii) that the petitioner~~] (b) has complied with this chapter;

3661 [~~(iii) that the petitioner has obtained~~]

3662 (c) is owed damages under a final judgment that:

3663 (i) is issued by the court in the manner prescribed under this section[~~,- indicating~~]; and

3664 (ii) indicates the amount of the final judgment awarded;

3665 [~~(iv) that the petitioner~~]

3666 (d) has proved the amount still owing on the final judgment [at the date of] on the day

3667 on which the petition is filed;

3668 [~~(v) (A) that:~~]

3669 [~~(F) the petitioner~~]

3670 (e) (i) (A) has a writ of execution issued upon the final judgment; and

3671 [~~(H) (B) has received a return made by~~] the officer executing the writ [~~has made a~~

3672 ~~return~~] showing that no property subject to execution in satisfaction of the final judgment could

3673 be found; [~~and~~] or

3674 [~~(B) (ii) if execution is levied against the property of the judgment debtor[~~,- that~~] or~~

3675 criminal defendant:

3676 [~~(F) the amount realized was insufficient~~]

3677 (A) has not realized an amount sufficient to satisfy the final judgment; and

3678 [~~(H) (B) is owed a balance [remains] on the final judgment after application of the~~

3679 ~~amount realized; [and]~~

3680 [~~(vi) that the petitioner has:~~]

3681 [~~(A) (f) has~~] made reasonable searches and inquiries to ascertain whether the judgment

3682 debtor or criminal defendant has any interest in property, real or personal, that may satisfy the

3683 final judgment; and

3684 [~~(B) (g) has~~] exercised reasonable diligence to secure payment of the final judgment

3685 from the assets of the judgment debtor or criminal defendant.

3686 ~~[(4) If the petitioner]~~ (6) If a person satisfies the court that it is not practicable for the  
 3687 ~~[petitioner] person~~ to comply with one or more of the requirements in Subsections ~~[(3)(b)(v)~~  
 3688 ~~and (3)(b)(vi)]~~ (5)(e) through (g), the court may waive those requirements.

3689 ~~[(5) (a) A judgment that is the basis for a claim against the fund may not have been~~  
 3690 ~~discharged in bankruptcy.]~~

3691 ~~[(b) In the case of a bankruptcy proceeding that is open or that is commenced during~~  
 3692 ~~the pendency of the claim, the claimant shall, prior to obtaining a claim against the fund, obtain~~  
 3693 ~~an order from the bankruptcy court declaring the judgment and debt to be nondischargeable.]~~

3694 ~~[(6) A person may not bring a claim against the fund if the person is substantially~~  
 3695 ~~complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.]~~

3696 Section 66. Section **61-2c-505** is amended to read:

3697 **61-2c-505. Court determination and order.**

3698 If the court determines that a claim should be levied against the portion of the fund  
 3699 allocated to carry out ~~[the provisions of]~~ this chapter, the court shall enter an order requiring  
 3700 the division to pay from the fund the portion of ~~[the petitioner's]~~ a final judgment that is  
 3701 payable from the fund under Section 61-2c-503.

3702 Section 67. Section **61-2c-507** is amended to read:

3703 **61-2c-507. Division subrogated -- Authority to revoke license.**

3704 (1) If the division pays a ~~[judgment creditor]~~ a person from the fund in accordance with  
 3705 this part:

3706 (a) the division is subrogated to the rights of ~~[the judgment creditor]~~ that person for the  
 3707 amounts paid out of the fund; and

3708 (b) any amount and interest recovered by the division shall be deposited in the fund.

3709 (2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from  
 3710 the fund is made under this part is automatically revoked as of the earlier of the day on which:

3711 (i) the division is ordered by a court to pay from the fund; or

3712 (ii) the division pays from the fund.

3713 (b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the  
 3714 revocation in a hearing conducted by the commission:

3715 (A) after the revocation; and

3716 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.



3717 (ii) The commission may delegate:

3718 (A) to the division or an administrative law judge the authority to conduct a hearing  
3719 described in Subsection (2)(b)(i); or

3720 (B) to the division the authority to make a decision on whether relief from a revocation  
3721 should be granted.

3722 (3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b), a  
3723 licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license  
3724 until the licensee pays into the fund:

3725 (a) the amount paid out of the fund on behalf of the licensee; and

3726 (b) interest at a rate determined by the division with the concurrence of the  
3727 commission.

3728 Section 68. Section **61-2f-101** is enacted to read:

3729 **CHAPTER 2f. REAL ESTATE LICENSING AND PRACTICES ACT**

3730 **Part 1. General Provisions**

3731 **61-2f-101. Title.**

3732 This chapter is known as the "Real Estate Licensing and Practices Act."

3733 Section 69. Section **61-2f-102**, which is renumbered from Section 61-2-2 is  
3734 renumbered and amended to read:

3735 **[61-2-2]. 61-2f-102. Definitions.**

3736 As used in this chapter:

3737 (1) "Associate [~~real estate broker~~ and "~~associate~~] broker" means [~~any person~~] an  
3738 individual who is:

3739 (a) employed or engaged as an independent contractor by or on behalf of a [~~licensed~~  
3740 principal [~~real estate~~] broker to perform [~~any~~] an act set out in Subsection [~~(12)~~] (14) for  
3741 valuable consideration[~~, who has qualified~~]; and

3742 (b) licensed under this chapter as a principal [~~real estate~~] broker.

3743 (2) "Branch office" means a principal broker's real estate brokerage office [~~other than~~]  
3744 that is not the principal broker's main office.

3745 (3) "Commission" means the Real Estate Commission established under this chapter.

3746 (4) "Concurrence" means the entities given a concurring role must jointly agree for  
3747 action to be taken.

- 3748 (5) "Condominium~~[" or "condominium]~~ unit" is as defined in Section 57-8-3.
- 3749 (6) "Condominium homeowners' association" means ~~[all of]~~ the condominium unit
- 3750 owners acting as a group in accordance with declarations and bylaws.
- 3751 (7) (a) "Condominium hotel" means one or more condominium units that are operated
- 3752 as a hotel.
- 3753 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all
- 3754 of which are owned by a single entity.
- 3755 (8) "Director" means the director of the Division of Real Estate.
- 3756 (9) "Division" means the Division of Real Estate.
- 3757 (10) "Entity" means:
- 3758 (a) a corporation;
- 3759 (b) a partnership;
- 3760 (c) a limited liability company;
- 3761 (d) a company;
- 3762 (e) an association;
- 3763 (f) a joint venture;
- 3764 (g) a business trust;
- 3765 (h) a trust; or
- 3766 (i) any organization similar to an entity described in Subsections (10)(a) through (h).
- 3767 ~~[(10)]~~ (11) "Executive director" means the director of the Department of Commerce.
- 3768 ~~[(11)]~~ (12) "Main office" means the address which a principal broker designates with
- 3769 the division as the principal broker's primary brokerage office.
- 3770 (13) "Person" means an individual or entity.
- 3771 ~~[(12)]~~ (14) "Principal ~~[real estate broker]~~ and "principal] broker" means ~~[any person]~~
- 3772 an individual who:
- 3773 (a) (i) ~~[who]~~ sells or lists real estate for sale~~;~~ with the expectation of receiving
- 3774 valuable consideration;
- 3775 (ii) buys, exchanges, or auctions real estate, options on real estate, or improvements on
- 3776 real estate with the expectation of receiving valuable consideration; or
- 3777 ~~[(ii)]~~ (iii) who advertises, offers, attempts, or otherwise holds ~~[himself]~~ the individual
- 3778 out to be engaged in the business described in Subsection ~~[(12)(a)(i)]~~ (14)(a)(i) or (ii);

3779 (b) is employed by or on behalf of the owner of real estate or by a prospective  
3780 purchaser of real estate [~~who performs any of the acts~~] and performs an act described in  
3781 Subsection [~~(12)~~] (14)(a), whether the [~~person's~~] individual's compensation is at a stated salary,  
3782 a commission basis, upon a salary and commission basis, or otherwise;

3783 (c) [~~who,~~] (i) with the expectation of receiving valuable consideration, manages  
3784 property owned by another person; or [~~who~~]

3785 (ii) advertises or otherwise holds [~~himself~~] the individual out to be engaged in property  
3786 management;

3787 (d) [~~who,~~] with the expectation of receiving valuable consideration, assists or directs in  
3788 the procurement of prospects for or the negotiation of [~~the transactions~~] a transaction listed in  
3789 Subsections [~~(12)~~] (14)(a) and (c); [~~and~~]

3790 (e) except for [~~mortgage lenders, title insurance agents, and their employees, who~~] a  
3791 mortgage lender, title insurance producer, or an employee of a mortgage lender or title  
3792 insurance producer, assists or directs in the closing of [~~any~~] a real estate transaction with the  
3793 expectation of receiving valuable consideration[-]; and

3794 (f) is licensed as a principal broker under this chapter.

3795 [~~(13)~~] (15) (a) "Property management" means engaging in, with the expectation of  
3796 receiving valuable consideration, the management of [~~property~~] real estate owned by another  
3797 person or advertising or otherwise claiming to be engaged in property management by:

3798 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or  
3799 participating in a transaction calculated to secure the rental or leasing of real estate;

3800 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real  
3801 estate and accounting for and disbursing the money collected; or

3802 (iii) authorizing expenditures for repairs to the real estate.

3803 (b) "Property management" does not include:

3804 (i) hotel or motel management;

3805 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,  
3806 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or  
3807 similar public accommodations for [~~any~~] a period of less than 30 consecutive days, and the  
3808 management activities associated with these rentals; or

3809 (iii) the leasing or management of surface or subsurface minerals or oil and gas

3810 interests, if the leasing or management is separate from a sale or lease of the surface estate.

3811 ~~[(14)]~~ (16) "Real estate" includes leaseholds and business opportunities involving real  
3812 property.

3813 ~~[(15)]~~ "Real estate sales agent" and "sales agent" mean any person affiliated with a  
3814 licensed principal real estate broker, either as an independent contractor or an employee as  
3815 provided in Section 61-2-25, to perform for valuable consideration any act set out in  
3816 Subsection (12).]

3817 ~~[(16)]~~ (17) (a) "Regular salaried employee" means an individual who performs a  
3818 service for wages or other remuneration, whose employer withholds federal employment taxes  
3819 under a contract of hire, written or oral, express or implied.

3820 (b) "Regular salaried employee" does not include ~~[a person]~~ an individual who  
3821 performs services on a project-by-project basis or on a commission basis.

3822 ~~[(17)]~~ (18) "Reinstatement" means restoring a license that has expired or has been  
3823 suspended.

3824 ~~[(18)]~~ (19) "Reissuance" means the process by which a licensee may obtain a license  
3825 following revocation of the license.

3826 ~~[(19)]~~ (20) "Renewal" means extending a license for an additional licensing period on  
3827 or before the date the license expires.

3828 (21) "Sales agent" means an individual who is:

3829 (a) affiliated with a principal broker, either as an independent contractor or an  
3830 employee as provided in Section 61-2f-303, to perform for valuable consideration an act  
3831 described in Subsection (14); and

3832 (b) licensed under this chapter as a sales agent.

3833 ~~[(20)]~~ (22) (a) "Undivided fractionalized long-term estate" means an ownership interest  
3834 in real property by two or more persons that is [a]:

3835 (i) a tenancy in common; or

3836 (ii) any other legal form of undivided estate in real property including:

3837 (A) a fee estate;

3838 (B) a life estate; or

3839 (C) other long-term estate.

3840 (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

3841 Section 70. Section **61-2f-103**, which is renumbered from Section 61-2-5.5 is  
 3842 renumbered and amended to read:

3843 **[61-2-5-5]. 61-2f-103. Real Estate Commission.**

3844 (1) There is created within the division a Real Estate Commission. The commission  
 3845 shall:

3846 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
 3847 make rules for the administration of this chapter that are not inconsistent with this chapter,  
 3848 including:

3849 (i) licensing of:

3850 (A) a principal [brokers;] broker; and

3851 [~~(B)~~—associate brokers;]

3852 [~~(C)~~] (B) a sales [agents] agent;

3853 [~~(D)~~ real estate companies; and]

3854 (ii) registration of:

3855 (A) an entity; and

3856 [~~(E)~~] (B) a branch [~~offices~~] office;

3857 [~~(ii)~~] (iii) prelicensing and postlicensing education curricula;

3858 [~~(iii)~~] (iv) examination procedures;

3859 [~~(iv)~~] (v) the certification and conduct of:

3860 (A) a real estate [schools] school;

3861 (B) a course [~~providers; and~~] provider; or

3862 [~~(C)~~ instructors;]

3863 (C) an instructor;

3864 [~~(v)~~] (vi) proper handling of [~~funds~~] money received by [~~real estate licensees~~] a  
 3865 licensee under this chapter;

3866 [~~(vi)~~] (vii) brokerage office procedures and recordkeeping requirements;

3867 [~~(vii)~~] (viii) property management;

3868 [~~(viii)~~] (ix) standards of conduct for [~~real estate licensees~~] a licensee under this chapter;

3869 [~~(ix)~~ rules] (x) a rule made under Section [~~61-2-26~~] 61-2f-307 regarding an undivided  
 3870 fractionalized long-term estate; and

3871 [~~(x)~~] (xi) if the commission determines necessary, [~~rules~~] a rule as provided in

3872 Subsection [~~61-2-20~~] 61-2f-306(3) regarding a legal [forms] form;

3873 (b) establish, with the concurrence of the division, [~~all fees as~~] a fee provided for in  
 3874 this chapter [and Title 61, Chapter 2a, Real Estate Recovery Fund Act], except a fee imposed  
 3875 under Part 5, Real Estate Education, Research, and Recovery Fund Act;

3876 (c) conduct [~~an~~] an administrative [hearings] hearing not delegated by the commission  
 3877 to an administrative law judge or the division relating to the:

3878 (i) licensing of [~~any~~] an applicant;

3879 (ii) conduct of [~~any~~] a licensee;

3880 (iii) the certification or conduct of [~~any~~] a real estate school, course provider, or  
 3881 instructor regulated under this chapter; or

3882 (iv) violation of this chapter by any person;

3883 (d) with the concurrence of the director, impose [~~sanctions~~] a sanction as provided in  
 3884 Section [~~61-2-12~~] 61-2f-404;

3885 (e) advise the director on the administration and enforcement of [~~any matters~~] a matter  
 3886 affecting the division and the real estate sales and property management industries;

3887 (f) advise the director on matters affecting the division budget;

3888 (g) advise and assist the director in conducting real estate seminars; and

3889 (h) perform other duties as provided by [~~-(i)~~] this chapter [~~; and~~].

3890 [~~(ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.~~]

3891 (2) (a) The commission shall be comprised of five members appointed by the governor  
 3892 and approved by the Senate.

3893 (b) Four of the commission members shall:

3894 (i) have at least five years' experience in the real estate business; and

3895 (ii) hold an active principal broker [~~; associate broker~~], or sales agent license.

3896 (c) One commission member shall be a member of the general public.

3897 (d) [~~No more than one~~] The governor may not appoint a commission member  
 3898 described in Subsection (2)(b) [~~shall~~] who, at the time of appointment [~~reside in any given~~],  
 3899 resides in the same county in the state as another commission member.

3900 (e) At least one commission member described in Subsection (2)(b) shall at the time of  
 3901 an appointment reside in a county that is not a county of the first or second class.

3902 (3) (a) Except as required by Subsection (3)(b), as terms of current commission

3903 members expire, the governor shall appoint each new member or reappointed member to a  
3904 four-year term ending June 30.

3905 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
3906 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
3907 commission members are staggered so that approximately half of the commission is appointed  
3908 every two years.

3909 (c) Upon the expiration of the term of a member of the commission, the member of the  
3910 commission shall continue to hold office until a successor is appointed and qualified.

3911 (d) A commission member may not serve more than two consecutive terms.

3912 (e) Members of the commission shall annually select one member to serve as chair.

3913 (4) When a vacancy occurs in the membership for any reason, [~~the replacement shall be~~  
3914 ~~appointed~~] the governor, with the consent of the Senate shall appoint a replacement for the  
3915 unexpired term.

3916 (5) (a) A member may not receive compensation or benefits for the member's services,  
3917 but may receive per diem and expenses incurred in the performance of the member's official  
3918 duties at the rates established by the Division of Finance under Sections 63A-3-106 and  
3919 63A-3-107.

3920 (b) A member may decline to receive per diem and expenses for the member's service.

3921 (6) (a) The commission shall meet at least monthly.

3922 (b) The director may call additional meetings:

3923 (i) at the director's discretion;

3924 (ii) upon the request of the chair; or

3925 (iii) upon the written request of three or more commission members.

3926 (7) Three members of the commission constitute a quorum for the transaction of  
3927 business.

3928 Section 71. Section ~~61-2f-104~~, which is renumbered from Section 61-2-14 is  
3929 renumbered and amended to read:

3930 ~~[61-2-14]~~. 61-2f-104. List of licensees, registrants, and certificate holders to be  
3931 available.

3932 [~~The~~] (1) Upon request, the division shall make available [~~at reasonable cost~~] a list of  
3933 the names and addresses of [~~all~~] the persons licensed, registered, or certified by it under this

3934 chapter either directly or through a third party.

3935 (2) A person who requests a list under Subsection (1) shall pay the costs incurred by  
3936 the division to make the list available.

3937 Section 72. Section **61-2f-105** is enacted to read:

3938 **61-2f-105. Fees.**

3939 (1) In addition to when expressly authorized in another provision of this chapter, the  
3940 division may charge and collect reasonable fees determined by the commission with the  
3941 concurrence of the division under Section 63J-1-504 to cover the costs for:

3942 (a) issuing a new or duplicate license;

3943 (b) registering an entity or branch office;

3944 (c) certifying a real estate school, course, or instructor;

3945 (d) providing a history of a license, registration, or certification; and

3946 (e) producing a certified copy of an official document, order, or other paper or  
3947 transcript; and

3948 (f) other duties required by this chapter.

3949 (2) Notwithstanding Section 13-1-2, a fee collected under Subsection (1)(c) shall be  
3950 deposited in the Real Estate Education, Research, and Recovery Fund.

3951 (3) If a person pays a fee or costs to the division with a negotiable instrument and the  
3952 negotiable instrument is not honored for payment:

3953 (a) the transaction for which the payment is submitted is voidable by the division;

3954 (b) the division may reverse the transaction if payment of the applicable fee or costs is  
3955 not received in full; and

3956 (c) the person's license, certification, or registration is automatically suspended:

3957 (i) beginning the day on which the payment is due; and

3958 (ii) ending the day on which payment is made in full.

3959 (4) (a) A fee under this chapter is in lieu of all other license fees or assessments that  
3960 might otherwise be imposed or charged by the state or any of its political subdivisions upon, or  
3961 as a condition of, the privilege of conducting the business regulated by this chapter, except that  
3962 a political subdivision within the state may charge a business license fee on a principal broker  
3963 if the principal broker maintains a place of business within the jurisdiction of the political  
3964 subdivision.



3965 (b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes  
 3966 imposed under Title 59, Revenue and Taxation.

3967 Section 73. Section **61-2f-106**, which is renumbered from Section 61-2-22 is  
 3968 renumbered and amended to read:

3969 **[61-2-22]. 61-2f-106. Severability.**

3970 If ~~[any]~~ a provision of this chapter, or the application of ~~[any]~~ a provision to any person  
 3971 or circumstance, is held invalid, the remainder of this chapter ~~[shall not be affected thereby]~~  
 3972 shall be given effect without the invalid provision or application. The provisions of this  
 3973 provision are severable.

3974 Section 74. Section **61-2f-201**, which is renumbered from Section 61-2-1 is  
 3975 renumbered and amended to read:

3976 **Part 2. Licensure, Registration, and Certification**

3977 **[61-2-1]. 61-2f-201. License required.**

3978 (1) ~~[It is unlawful for any person to]~~ Unless a person is licensed under this chapter, the  
 3979 person may not do the following with respect to real estate located in this state:

3980 (a) engage in the business[;] of a principal broker, associate broker, or sales agent;

3981 (b) act in the capacity of[;] a principal broker, associate broker, or sales agent;

3982 (c) advertise[;] or assume to act as a principal [real estate] broker, associate [real  
 3983 estate] broker, or a [real estate] sales agent [within this state without a license obtained under  
 3984 this chapter].

3985 ~~[(2) It is unlawful for any person outside the state to engage in the business, act in the~~  
 3986 ~~capacity of, advertise, or assume to act as a principal real estate broker, associate real estate~~  
 3987 ~~broker, or a real estate sales agent with respect to real estate located within the state without a~~  
 3988 ~~license obtained under this chapter.]~~

3989 (2) Except as provided in Section 61-2f-202, an individual is required to be licensed as  
 3990 a principal broker or a sales agent if the individual performs, offers to perform, or attempts to  
 3991 perform one act for valuable consideration of:

3992 (a) buying, selling, leasing, managing, or exchanging real estate for another person; or

3993 (b) offering for another person to buy, sell, lease, manage, or exchange real estate.

3994 Section 75. Section **61-2f-202**, which is renumbered from Section 61-2-3 is  
 3995 renumbered and amended to read:

3996 ~~[61-2-3].~~ **61-2f-202. Exempt persons and transactions.**

3997 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not  
3998 required for:

3999 (i) ~~[a person]~~ an individual who as owner or lessor performs ~~[the acts]~~ an act described  
4000 in Subsection ~~[61-2-2(12)]~~ 61-2f-102(14) with reference to ~~[property]~~ real estate owned or  
4001 leased by that ~~[person]~~ individual;

4002 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference  
4003 to nonresidential real estate owned or leased by the employer, performs ~~[the acts enumerated in~~  
4004 ~~Subsections 61-2-2(12)(a) and (b)]~~ an act described in Subsection 61-2f-102(14)(a) or (b);

4005 (iii) a regular salaried employee of the owner of real estate who performs property  
4006 management services with reference to real estate owned by the employer, except that the  
4007 employee may only manage ~~[property]~~ real estate for one employer;

4008 (iv) ~~[a person]~~ an individual who performs property management services for the  
4009 apartments at which that ~~[person]~~ individual resides in exchange for free or reduced rent on  
4010 that ~~[person's]~~ individual's apartment;

4011 (v) a regular salaried employee of a condominium homeowners' association who  
4012 manages real ~~[property]~~ estate subject to the declaration of condominium that established the  
4013 condominium homeowners' association, except that the employee may only manage ~~[property]~~  
4014 real estate for one condominium homeowners' association; and

4015 (vi) a regular salaried employee of a licensed property management company who  
4016 performs support services, as prescribed by rule, for the property management company.

4017 (b) Subsection (1)(a) does not exempt from licensing:

4018 (i) an employee engaged in the sale of ~~[properties]~~ real estate regulated under:

4019 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

4020 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

4021 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,  
4022 Chapter 23, Real Estate Cooperative Marketing Act; or

4023 (iii) ~~[a person]~~ an individual whose interest as an owner or lessor is obtained by that  
4024 ~~[person]~~ individual or transferred to that ~~[person]~~ individual for the purpose of evading the  
4025 application of this chapter, and not for ~~[any other]~~ another legitimate business reason.

4026 (2) A license under this chapter is not required for:

- 4027 (a) an isolated transaction by ~~[a person]~~ an individual holding a duly executed power of  
 4028 attorney from ~~[the]~~ an owner;
- 4029 (b) services rendered by an attorney in performing the attorney's duties as an attorney;
- 4030 (c) a receiver, trustee in bankruptcy, administrator, executor, or ~~[a person]~~ an  
 4031 individual acting under order of ~~[any]~~ a court;
- 4032 (d) a trustee or employee of a trustee under a deed of trust or a will;
- 4033 (e) a public utility, officer of a public utility, or regular salaried employee of a public  
 4034 utility, unless performance of ~~[any of the acts set out]~~ an act described in Subsection  
 4035 ~~[61-2-2(12)]~~ 61-2f-102(14) is in connection with the sale, purchase, lease, or other disposition  
 4036 of real estate or investment in real estate unrelated to the principal business activity of that  
 4037 public utility;
- 4038 (f) a regular salaried employee or authorized agent working under the oversight of the  
 4039 Department of Transportation when performing an act on behalf of the Department of  
 4040 Transportation in connection with one or more of the following:
- 4041 (i) the acquisition of real ~~[property]~~ estate pursuant to Section 72-5-103;
- 4042 (ii) the disposal of real ~~[property]~~ estate pursuant to Section 72-5-111;
- 4043 (iii) services that constitute property management; or
- 4044 (iv) the leasing of real ~~[property;]~~ estate; and
- 4045 (g) a regular salaried employee of a county, city, or town when performing an act on  
 4046 behalf of the county, city, or town:
- 4047 (i) in accordance with:
- 4048 (A) if a regular salaried employee of a city or town:
- 4049 (I) Title 10, Utah Municipal Code; or
- 4050 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 4051 (B) if a regular salaried employee of a county:
- 4052 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 4053 (II) Title 17, Counties; and
- 4054 (ii) in connection with one or more of the following:
- 4055 (A) the acquisition of real ~~[property]~~ estate, including by eminent domain;
- 4056 (B) the disposal of real ~~[property]~~ estate;
- 4057 (C) services that constitute property management; or

4058 (D) the leasing of real [~~property~~] estate.

4059 (3) A license under this chapter is not required for [~~a person~~] an individual registered to  
4060 act as a broker-dealer, agent, or investment adviser under the Utah and federal securities laws  
4061 in the sale or the offer for sale of real estate if:

4062 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the  
4063 Securities Act of 1933 and the Securities Exchange Act of 1934; and

4064 (ii) the security is registered for sale in accordance with:

4065 (A) pursuant to the Securities Act of 1933; or

4066 (B) by Title 61, Chapter 1, Utah Uniform Securities Act; or

4067 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.  
4068 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation  
4069 D, Rule 506, 17 C.F.R. Sec. 230.506; and

4070 (ii) the selling agent and the purchaser are not residents of this state.

4071 Section 76. Section ~~61-2f-203~~, which is renumbered from Section 61-2-6 is  
4072 renumbered and amended to read:

4073 ~~[61-2-6]~~. **61-2f-203. Licensing requirements.**

4074 (1) (a) Except as provided in Subsection (5), the commission shall determine the  
4075 qualifications and requirements of an applicant for:

4076 (i) a principal broker license; or

4077 [~~(ii) an associate broker license; or~~]

4078 [~~(iii)~~] (ii) a sales agent license.

4079 (b) The division, with the concurrence of the commission, shall require and pass upon  
4080 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of  
4081 each applicant for an initial license or for renewal of an existing license.

4082 (c) (i) The division, with the concurrence of the commission, shall require an applicant  
4083 for:

4084 (A) a sales agent license to complete an approved educational program consisting of  
4085 the number of hours designated by rule made by the commission with the concurrence of the  
4086 division, except that the rule may not require less than 120 hours; and

4087 (B) [~~an associate broker or~~] a principal broker license to complete an approved  
4088 educational program consisting of the number of hours designated by rule made by the

4089 commission with the concurrence of the division, except that the rule may not require less than  
4090 120 hours.

4091 (ii) An hour required by this section means 50 minutes of instruction in each 60  
4092 minutes.

4093 (iii) The maximum number of program hours available to an individual is ~~[10]~~ eight  
4094 hours per day.

4095 (d) The division, with the concurrence of the commission, shall require the applicant to  
4096 pass an examination approved by the commission covering:

4097 (i) the fundamentals of:

4098 (A) the English language;

4099 (B) arithmetic;

4100 (C) bookkeeping; and

4101 (D) real estate principles and practices;

4102 (ii) the provisions of this chapter;

4103 (iii) the rules established by the commission; and

4104 (iv) any other aspect of Utah real estate license law considered appropriate.

4105 (e) (i) Three years' full-time experience as a ~~[real estate]~~ sales agent or its equivalent is  
4106 required before an applicant may apply for, and secure a principal broker ~~[or associate broker]~~  
4107 license in this state.

4108 (ii) The commission shall establish by rule, made in accordance with Title 63G,  
4109 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will  
4110 accept experience or special education in similar fields of business in lieu of the three years'  
4111 experience.

4112 (2) (a) The division, with the concurrence of the commission, may require an applicant  
4113 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's  
4114 reputation and competency as set forth by rule.

4115 (b) The division shall require an applicant to provide the applicant's Social Security  
4116 number, which is a private record under Subsection 63G-2-302(1)(h).

4117 (3) (a) ~~[A nonresident principal broker may be licensed in this state by complying]~~ An  
4118 individual who is not a resident of this state may be licensed in this state if the person complies  
4119 with all the provisions of this chapter [except that of residency].

4120 (b) [~~A nonresident~~] An individual who is not a resident of this state may act as an  
4121 associate broker or be licensed as a sales agent [~~may become licensed~~] in this state by:

4122 (i) complying with all the provisions of this chapter [~~except that of residency~~]; and

4123 (ii) being employed or engaged as an independent contractor by or on behalf of a  
4124 [~~nonresident or resident~~] principal broker who is licensed in this state, regardless of whether  
4125 the principal broker is a resident of this state.

4126 (4) (a) Except as provided in Subsection [~~61-2-9~~] 61-2f-204(1)(e)(iv)(vi), the division  
4127 and commission shall treat an application to be relicensed of an applicant whose real estate  
4128 license is revoked as an original application.

4129 (b) In the case of an applicant for a new license as a principal broker [~~or associate~~  
4130 ~~broker~~], the applicant is not entitled to credit for experience gained before the revocation of a  
4131 real estate license.

4132 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division  
4133 the authority to:

4134 (i) review a class or category of applications for initial or renewed licenses;

4135 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

4136 (iii) approve or deny a license application without concurrence by the commission.

4137 (b) (i) If the commission delegates to the division the authority to approve or deny an  
4138 application without concurrence by the commission and the division denies an application for  
4139 licensure, the applicant who is denied licensure may petition the commission for review of the  
4140 denial of licensure.

4141 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek  
4142 agency review by the executive director only after the commission has reviewed the division's  
4143 denial of the applicant's application.

4144 Section 77. Section **61-2f-204**, which is renumbered from Section 61-2-9 is  
4145 renumbered and amended to read:

4146 [~~61-2-9~~]. **61-2f-204. Licensing fees and procedures -- Renewal fees and**  
4147 **procedures.**

4148 (1) (a) Upon filing an application for [~~a principal broker, associate broker, or sales~~  
4149 ~~agent license examination~~] an examination for a license under this chapter, the applicant shall  
4150 pay a nonrefundable fee as determined by the commission with the concurrence of the division

4151 under Section 63J-1-504 for admission to the examination.

4152 (b) ~~[A]~~ An applicant for a principal broker~~[, associate broker,]~~ license or sales agent  
4153 [applicant] license shall pay a nonrefundable fee as determined by the commission with the  
4154 concurrence of the division under Section 63J-1-504 for issuance of an initial license or license  
4155 renewal.

4156 (c) A license issued under this Subsection (1) shall be issued for a period of not less  
4157 than two years as determined by the division with the concurrence of the commission.

4158 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

4159 (A) a new sales agent applicant; or

4160 (B) a principal broker applicant.

4161 (ii) An applicant described in this Subsection (1)(d) shall:

4162 (A) submit fingerprint cards in a form acceptable to the division at the time the license  
4163 application is filed; and

4164 (B) consent to a criminal background check by the Utah Bureau of Criminal  
4165 Identification and the Federal Bureau of Investigation regarding the application.

4166 (iii) The division shall request the Department of Public Safety to complete a Federal  
4167 Bureau of Investigation criminal background check for each applicant described in this  
4168 Subsection (1)(d) through the national criminal history system or any successor system.

4169 (iv) The applicant shall pay the cost of the criminal background check and the  
4170 fingerprinting.

4171 (v) ~~[Monies]~~ Money paid to the division by an applicant for the cost of the criminal  
4172 background check ~~[are]~~ is nonlapsing.

4173 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of  
4174 the criminal background check. ~~[If]~~

4175 (ii) A license is immediately and automatically revoked if the criminal background  
4176 check discloses the applicant fails to accurately disclose a criminal history~~[, the license shall be~~  
4177 ~~immediately and automatically revoked.]~~ involving:

4178 (A) the real estate industry;

4179 (B) fraud;

4180 (C) misrepresentation; or

4181 (D) deceit.

4182 (iii) If a criminal background check discloses that an applicant fails to accurately  
4183 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:  
4184 (A) shall review the application; and  
4185 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,  
4186 Utah Administrative Rulemaking Act, may:  
4187 (I) place a condition on a license;  
4188 (II) place a restriction on a license;  
4189 (III) revoke a license; or  
4190 (IV) refer the application to the commission for a decision.  
4191 [(iv)] (iv) A person whose conditional license is automatically revoked under  
4192 Subsection (1)(e)[(iv)](ii) or whose license is conditioned, restricted, or revoked under  
4193 Subsection (1)(e)(iii) may have a [post-revocation] hearing after the action is taken to challenge  
4194 the [revocation] action. The hearing shall be conducted in accordance with Title 63G, Chapter  
4195 4, Administrative Procedures Act.  
4196 [(iii)] (v) The [division] director shall designate one of the following to act as the  
4197 presiding officer in a [postrevocation] hearing described in [this] Subsection (1)(e)(iv):  
4198 (A) the division; or  
4199 (B) the division with the concurrence of the commission.  
4200 [(iv)] (vi) The decision on whether relief from [the revocation of a license] an action  
4201 under this Subsection (1)(e) will be granted shall be made by the presiding officer.  
4202 [(v)] (vii) Relief from [a] an automatic revocation under [this] Subsection (1)(e)(ii)  
4203 may be granted only if:  
4204 (A) the criminal history upon which the division based the revocation:  
4205 (I) did not occur; or  
4206 (II) is the criminal history of another person;  
4207 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and  
4208 (II) the applicant has a reasonable good faith belief at the time of application that there  
4209 was no criminal history to be disclosed; or  
4210 (C) the division fails to follow the prescribed procedure for the revocation.  
4211 [(vi)] (viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld  
4212 after a [post-revocation] hearing, the [person] individual may not apply for a new license until



4213 at least 12 months after the day on which the license is revoked.

4214 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

4215 (ii) As a condition of renewal, an active licensee shall demonstrate competence by  
4216 completing 18 hours of continuing education within a two-year renewal period subject to rules  
4217 made by the commission, with the concurrence of the division.

4218 (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission  
4219 shall consider:

4220 (A) evaluating continuing education on the basis of competency, rather than course  
4221 time;

4222 (B) allowing completion of courses in a significant variety of topic areas that the  
4223 division and commission determine are valuable in assisting an individual licensed under this  
4224 chapter to increase the individual's competency; and

4225 (C) allowing completion of courses that will increase a licensee's professional  
4226 competency in the area of practice of the licensee.

4227 [~~(iv) The division with the concurrence of the commission shall certify the continuing~~  
4228 ~~education required under this Subsection (2)(a) which may include:]~~

4229 [~~(A) state conventions;~~]

4230 [~~(B) home study courses;~~]

4231 [~~(C) video courses; and]~~

4232 [~~(D) closed circuit television courses.]~~

4233 [~~(iv)~~] (iv) The commission with concurrence of the division may exempt a licensee  
4234 from all or a part of the continuing education requirement of this Subsection (2)(a) for a  
4235 reasonable period of time:

4236 (A) upon a finding of reasonable cause, including:

4237 (I) military service; or

4238 (II) if an individual is elected or appointed to government service, the individual's  
4239 government service during which the individual spends a substantial time addressing real estate  
4240 issues; and

4241 (B) under conditions established by rule made in accordance with Title 63G, Chapter 3,  
4242 Utah Administrative Rulemaking Act.

4243 (b) For a period of 30 days after the expiration date of a license, the license may be

4244 reinstated upon:

4245 (i) payment of a renewal fee and a late fee determined by the commission with the  
4246 concurrence of the division under Section 63J-1-504; and

4247 (ii) providing proof acceptable to the division and the commission of the licensee

4248 having:

4249 (A) completed the hours of education required by Subsection (2)(a); or

4250 (B) demonstrated competence as required under Subsection (2)(a).

4251 (c) After the 30-day period described in Subsection (2)(b), and until six months after

4252 the expiration date, the license may be reinstated by:

4253 (i) paying a renewal fee and a late fee determined by the commission with the

4254 concurrence of the division under Section 63J-1-504;

4255 (ii) providing to the division proof of satisfactory completion of 12 hours of continuing  
4256 education:

4257 (A) in addition to the requirements for a timely renewal; and

4258 (B) on a subject determined by the commission by rule made in accordance with Title  
4259 63G, Chapter 3, Utah Administrative Rulemaking Act; and

4260 (iii) providing proof acceptable to the division and the commission of the licensee

4261 having:

4262 (A) completed the hours of education required under Subsection (2)(a); or

4263 (B) demonstrated competence as required under Subsection (2)(a).

4264 (d) After the six-month period described in Subsection (2)(c), and until one year after

4265 the expiration date, the license may be reinstated by:

4266 (i) paying a renewal fee and a late fee determined by the commission with the

4267 concurrence of the division under Section 63J-1-504;

4268 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing  
4269 education:

4270 (A) in addition to the requirements for a timely renewal; and

4271 (B) on a subject determined by the commission by rule made in accordance with Title  
4272 63G, Chapter 3, Utah Administrative Rulemaking Act; and

4273 (iii) providing proof acceptable to the division and the commission of the licensee

4274 having:

- 4275 (A) completed the hours of education required by Subsection (2)(a); or  
4276 (B) demonstrated competence as required under Subsection (2)(a).  
4277 (e) The division shall relicense a person who does not renew that person's license  
4278 within one year as prescribed for an original application.  
4279 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license  
4280 that would expire under Subsection (2)(a) except for the extension if:  
4281 (i) the person complies with the requirements of this section to renew the license; and  
4282 (ii) at the time of the extension, there is pending under this chapter:  
4283 (A) the application for renewal of the license; or  
4284 (B) a disciplinary action.  
4285 (3) (a) As a condition for the activation of an inactive license that was in an inactive  
4286 status at the time of the licensee's most recent renewal, the licensee shall supply the division  
4287 with proof of:  
4288 (i) successful completion of the respective sales agent or principal broker licensing  
4289 examination within six months prior to applying to activate the license; or  
4290 (ii) the successful completion of the hours of continuing education that the licensee  
4291 would have been required to complete under Subsection (2)(a) if the license had been on active  
4292 status at the time of the licensee's most recent renewal.  
4293 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah  
4294 Administrative Rulemaking Act, establish by rule:  
4295 (i) the nature or type of continuing education required for reactivation of a license; and  
4296 (ii) how long before reactivation the continuing education must be completed.  
4297 ~~[(4) (a) A principal broker license may be granted to a corporation, partnership, or~~  
4298 ~~association if the corporation, partnership, or association has affiliated with it an individual~~  
4299 ~~who:]~~  
4300 ~~[(i) has qualified as a principal broker under the terms of this chapter; and]~~  
4301 ~~[(ii) serves in the capacity of a principal broker.]~~  
4302 ~~[(b) Application for the license described in Subsection (4)(a) shall be made in~~  
4303 ~~accordance with the rules adopted by the division with the concurrence of the commission:]~~  
4304 ~~[(5) The division may charge and collect reasonable fees determined by the~~  
4305 ~~commission with the concurrence of the division under Section 63J-1-504 to cover the costs~~

4306 for:]

4307 [~~(a) issuance of a new or duplicate license;~~]

4308 [~~(b) a license history or certification;~~]

4309 [~~(c) a certified copy of an official document, order, or other paper or transcript;~~]

4310 [~~(d) certifying a real estate school, course, or instructor, the fees for which shall,~~

4311 notwithstanding Section 13-1-2, be deposited in the Real Estate Education, Research, and

4312 Recovery Fund; and]

4313 [~~(e) other duties required by this chapter.]~~

4314 [~~(6) If a licensee submits or causes to be submitted a check, draft, or other negotiable~~  
 4315 instrument to the division for payment of a fee, and the check, draft, or other negotiable  
 4316 instrument is dishonored, the transaction for which the payment is submitted is void and will  
 4317 be reversed by the division if payment of the applicable fee is not received in full.]

4318 [~~(7) (a) A fee under this chapter and the additional license fee for the Real Estate~~  
 4319 Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other license  
 4320 fees or assessments that might otherwise be imposed or charged by the state or any of its  
 4321 political subdivisions, upon, or as a condition of, the privilege of conducting the business  
 4322 regulated by this chapter, except that a political subdivision within the state may charge a  
 4323 business license fee on a principal broker if the principal broker maintains a place of business  
 4324 within the jurisdiction of the political subdivision.]

4325 [~~(b) Unless otherwise exempt, a licensee under this chapter is subject to all taxes~~  
 4326 imposed under Title 59, Revenue and Taxation.]

4327 Section 78. Section **61-2f-205**, which is renumbered from Section 61-2-7 is  
 4328 renumbered and amended to read:

4329 ~~[61-2-7].~~ **61-2f-205. Form of license -- Display of license.**

4330 (1) The division shall issue to ~~[each]~~ a licensee a wall license ~~[showing]~~ that contains:

4331 (a) the name and address of the licensee~~[- The];~~

4332 (b) the seal of the state ~~[shall be affixed to each license. Each license shall contain];~~

4333 and

4334 (c) any other matter prescribed by the division ~~[and shall be delivered or mailed to].~~

4335 (2) The division shall send the license described in Subsection (1) to the licensee at the  
 4336 address furnished by the licensee. ~~[The wall licenses of principal brokers, associate brokers,~~

4337 and sales agents who are affiliated with an office shall be kept in the office]

4338 (3) A principal broker shall keep the license of the principal broker and the license of  
4339 any associate broker or sales agent affiliated with the principal broker in the office in which the  
4340 licensee works to be made available on request.

4341 Section 79. Section **61-2f-206** is enacted to read:

4342 **61-2f-206. Registration of entity or branch office -- Certification of education**  
4343 **providers and courses -- Specialized licenses.**

4344 (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it  
4345 is registered with the division.

4346 (b) To register with the division under this Subsection (1), an entity shall submit to the  
4347 division:

4348 (i) an application in a form required by the division;

4349 (ii) evidence of an affiliation with a principal broker;

4350 (iii) evidence that the entity is registered and in good standing with the Division of  
4351 Corporations and Commercial Code; and

4352 (iv) a registration fee established by the commission with the concurrence of the  
4353 division under Section 63J-1-504.

4354 (2) (a) A principal broker shall register with the division each of the principal broker's  
4355 branch offices.

4356 (b) To register a branch office with the division under this Subsection (2), a principal  
4357 broker shall submit to the division:

4358 (i) an application in a form required by the division; and

4359 (ii) a registration fee established by the commission with the concurrence of the  
4360 division under Section 63J-1-504.

4361 (3) (a) In accordance with rules made by the commission, the division shall certify:

4362 (i) a real estate school;

4363 (ii) a course provider; or

4364 (iii) an instructor.

4365 (b) In accordance with rules made by the commission, and with the concurrence of the  
4366 commission, the division shall certify a continuing education course that is required under this  
4367 section.

4368           (4) (a) Except as provided by rule, a principal broker may not be responsible for more  
4369 than one registered entity at the same time.

4370           (b) (i) In addition to issuing a principal broker license or sales agent license authorizing  
4371 the performance of an act set forth in Section 61-2f-201, the division may issue a specialized  
4372 sales license or specialized property management license with the scope of practice limited to  
4373 the specialty.

4374           (ii) An individual may hold a specialized license in addition to a license as a principal  
4375 broker or a sales agent.

4376           (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah  
4377 Administrative Rulemaking Act, for the administration of this Subsection (4), including:

4378           (A) prelicensing and postlicensing education requirements;

4379           (B) examination requirements;

4380           (C) affiliation with real estate brokerages or property management companies; and

4381           (D) other licensing procedures.

4382           Section 80. Section **61-2f-207**, which is renumbered from Section 61-2-7.1 is  
4383 renumbered and amended to read:

4384           ~~[61-2-7.1].~~    **61-2f-207. Change of information -- Failure to notify.**

4385           (1) An applicant, licensee, registrant, or certificate holder shall send the division a  
4386 signed statement in the form required by the division notifying the division within 10 business  
4387 days of any change of:

4388           (a) principal broker;

4389           (b) principal business location;

4390           (c) mailing address;

4391           (d) home street address;

4392           (e) an individual's name; or

4393           (f) business name.

4394           (2) The division may charge a fee established by the commission with the concurrence  
4395 of the division in accordance with Section 63J-1-504 for processing any notification of change  
4396 submitted by an applicant, licensee, registrant, or certificate holder.

4397           (3) (a) When providing the division a business location or home street address, a  
4398 physical location or street address must be provided.

4399 (b) When providing a mailing address, an applicant, licensee, registrant, or certificate  
 4400 holder may provide a post office box or other mail drop location.

4401 (4) Failure to notify the division of a change described in Subsection (1) is separate  
 4402 grounds for disciplinary action against ~~the~~ an applicant, licensee, registrant, or certificate  
 4403 holder.

4404 (5) An applicant, licensee, registrant, or certificate holder is considered to have  
 4405 received any notification that has been sent to the last address furnished to the division by the  
 4406 applicant, licensee, registrant, or certificate holder.

4407 Section 81. Section **61-2f-301**, which is renumbered from Section 61-2-7.2 is  
 4408 renumbered and amended to read:

### 4409 **Part 3. Operational Requirements**

#### 4410 **[61-2-7.2]. 61-2f-301. Reporting requirements.**

4411 A licensee shall notify the division of the following by sending the division a signed  
 4412 statement within 10 business days of:

4413 (1) (a) a conviction of a criminal offense;

4414 (b) the entry of a plea in abeyance to a criminal offense; or

4415 (c) the potential resolution of a criminal case by:

4416 (i) a diversion agreement; or

4417 (ii) ~~[any other]~~ another agreement under which a criminal charge is held in suspense  
 4418 for a period of time; ~~[or]~~

4419 (2) filing a personal or brokerage bankruptcy~~[-]~~;

4420 (3) the suspension, revocation, surrender, cancellation, or denial of a license or

4421 registration of the licensee that is necessary to engage in an occupation or profession,

4422 regardless of whether the license or registration is issued by this state or another jurisdiction; or

4423 (4) the entry of a cease and desist order or a temporary or permanent injunction:

4424 (a) against the licensee by a court or administrative agency; and

4425 (b) on the basis of:

4426 (i) conduct or a practice involving the business of real estate; or

4427 (ii) conduct involving fraud, misrepresentation, or deceit.

4428 Section 82. Section **61-2f-302**, which is renumbered from Section 61-2-10 is  
 4429 renumbered and amended to read:

4430            ~~[61-2-10].~~    **61-2f-302.** **Affiliation with more than one broker -- Specialized**  
4431 **licenses -- Designation of agents or brokers.**

4432            ~~[(1) (a) Except as provided in Subsection (1)(b), an associate broker or sales agent may~~  
4433 ~~not accept valuable consideration for the performance of an act specified in this chapter from a~~  
4434 ~~person except the principal broker with whom the associate broker or sales agent is affiliated~~  
4435 ~~and licensed.]~~

4436            ~~[(b) An associate broker or sales agent may receive valuable consideration for the~~  
4437 ~~performance of an act specified in this chapter from a person other than the principal broker~~  
4438 ~~with whom the associate broker or sales agent is affiliated if:]~~

4439            ~~[(i) the valuable consideration is paid with a payment instrument prepared by a title~~  
4440 ~~insurance agent;]~~

4441            ~~[(ii) the title insurance agent provides the payment instrument to the principal broker;]~~

4442            ~~[(iii) the title insurance agent complies with the written instructions of the principal~~  
4443 ~~broker;]~~

4444            ~~[(A) in preparing the payment instrument; and]~~

4445            ~~[(B) delivering the payment instrument to the principal broker; and]~~

4446            ~~[(iv) the principal broker directly delivers the payment instrument to the associate~~  
4447 ~~broker or sales agent.]~~

4448            ~~[(c) The commission, with the concurrence of the division, shall make rules in~~  
4449 ~~accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~

4450            ~~[(i) defining what constitutes a "payment instrument" for purposes of this Subsection~~  
4451 ~~(1); or]~~

4452            ~~[(ii) the form and contents of the written instructions required by Subsection (1)(b),~~  
4453 ~~including providing that the contents of the written instructions indicate that the payment~~  
4454 ~~instrument process is an assignment to the associate broker or sales agent by the principal~~  
4455 ~~broker of a portion of the consideration the title insurance agent is obligated to pay the~~  
4456 ~~principal broker.]~~

4457            (1) An individual who is not a principal broker may not engage in an act described in  
4458 Section 61-2f-201 unless the individual is affiliated with a principal broker as:

4459            (a) an associate broker; or

4460            (b) a sales agent.



4461 (2) (a) An inactive associate broker or sales agent may not conduct a real estate  
 4462 transaction until the inactive associate broker or sales agent becomes affiliated with a  
 4463 [~~licensed~~] principal broker and submits the required documentation to the division.

4464 (b) An inactive principal broker may not conduct a real estate transaction until the  
 4465 principal broker's license is activated with the division.

4466 (3) A sales agent or associate broker may not affiliate with more than one principal  
 4467 broker at the same time.

4468 [~~(4)(a) Except as provided by rule, a principal broker may not be responsible for more  
 4469 than one real estate brokerage at the same time.]~~]

4470 [~~(b)(i) In addition to issuing principal broker, associate broker, and sales agent licenses  
 4471 authorizing the performance of all of the acts set forth in Subsection 61-2-2(12), the division  
 4472 may issue specialized sales licenses and specialized property management licenses with the  
 4473 scope of practice limited to the specialty.]~~]

4474 [~~(ii) An individual may hold a specialized license in addition to a license to act as a  
 4475 principal broker, an associate broker, or a sales agent.]~~]

4476 [~~(iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah  
 4477 Administrative Procedures Act, for the administration of this Subsection (4), including:]~~]

4478 [~~(A) prelicensing and postlicensing education requirements;]~~]

4479 [~~(B) examination requirements;]~~]

4480 [~~(C) affiliation with real estate brokerages or property management companies; and]~~]

4481 [~~(D) other licensing procedures.]~~]

4482 [~~(e)~~] (4) An individual may not be a principal broker of [~~a brokerage~~] an entity and a  
 4483 sales agent or associate broker for a different [~~brokerage~~] entity at the same time.

4484 (5) An owner, purchaser, lessor, or lessee who engages the services of a principal  
 4485 broker may designate which sales agents or associate brokers affiliated with that principal  
 4486 broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale, lease, or  
 4487 exchange of real estate, or in exercising an option relating to real estate.

4488 Section 83. Section ~~61-2f-303~~, which is renumbered from Section 61-2-25 is  
 4489 renumbered and amended to read:

4490 ~~[61-2-25].~~ **61-2f-303. Sales agents -- Affiliated with broker as independent**  
 4491 **contractors or employees -- Presumption.**

4492 A sales agent may be affiliated with a [~~licensed~~] principal [~~real estate~~] broker either as  
4493 an independent contractor or as an employee. The relationship between sales agent and  
4494 principal broker is presumed to be an independent contractor relationship unless there is clear  
4495 and convincing evidence that the relationship was intended by the parties to be an employer  
4496 employee relationship.

4497 Section 84. Section **61-2f-304**, which is renumbered from Section 61-2-8 is  
4498 renumbered and amended to read:

4499 **61-2-8**. **61-2f-304. Termination of associate broker or sales agent by**  
4500 **principal broker -- Notice.**

4501 [~~If~~] (1) If a principal broker terminates an associate broker or sales agent [is discharged  
4502 by a principal broker], the principal broker shall [within three days, send] by no later than three  
4503 days from the day on which the principal broker terminates the associate broker or sales agent:

4504 (a) provide the division a signed statement notifying the division of the [~~discharge.~~  
4505 ~~The principal broker shall address a communication]~~ termination; and

4506 (b) send to the last-known residence address of that associate broker or sales agent  
4507 [~~advising him that notice of his termination has been delivered or sent to the division. It is~~  
4508 ~~unlawful for any]~~ notice that the principal broker has notified the division of the termination of  
4509 the associate broker or sales agent.

4510 (2) An associate broker or sales agent [~~to~~] may not perform any [~~of the acts]~~ act under  
4511 this chapter, directly or indirectly, from and after the date of receipt of the termination notice  
4512 until [~~affiliation with a principal broker has been established]~~ the day on which the associate  
4513 broker or sales agent is affiliated with a principal broker.

4514 Section 85. Section **61-2f-305** is enacted to read:

4515 **61-2f-305. Restrictions on commissions.**

4516 (1) Except as provided in Subsection (2), an associate broker or sales agent may not  
4517 accept valuable consideration for the performance of an act specified in this chapter from a  
4518 person except the principal broker with whom the associate broker or sales agent is affiliated.

4519 (2) An associate broker or sales agent may receive valuable consideration for the  
4520 performance of an act specified in this chapter from a person other than the principal broker  
4521 with whom the associate broker or sales agent is affiliated if:

4522 (a) the valuable consideration is paid with a payment instrument prepared by a title

4523 insurance agent;

4524 (b) the title insurance agent provides the payment instrument to the principal broker;

4525 (c) the title insurance agent complies with the written instructions of the principal

4526 broker:

4527 (i) in preparing the payment instrument; and

4528 (ii) delivering the payment instrument to the principal broker; and

4529 (d) the principal broker directly delivers the payment instrument to the associate broker

4530 or sales agent.

4531 (3) The commission, with the concurrence of the division, shall make rules in

4532 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

4533 (a) defining what constitutes a "payment instrument" for purposes of this section; or

4534 (b) the form and contents of the written instructions required by Subsection (2),

4535 including providing that the contents of the written instructions indicate that the payment

4536 instrument process is an assignment to the associate broker or sales agent by the principal

4537 broker of a portion of the consideration the title insurance agent is obligated to pay the

4538 principal broker.

4539 Section 86. Section **61-2f-306**, which is renumbered from Section 61-2-20 is  
4540 renumbered and amended to read:

4541 **[61-2-20]. 61-2f-306. Rights and privileges of real estate licensees to fill out**  
4542 **forms or documents.**

4543 (1) Except as provided in Subsection (2), a real estate licensee may fill out only those  
4544 legal forms approved by the commission and the attorney general, and those forms provided by  
4545 statute.

4546 (2) (a) (i) A principal broker may fill out any documents associated with the closing of  
4547 a real estate transaction.

4548 (ii) A branch broker or associate broker may fill out any documents associated with the  
4549 closing of a real estate transaction if designated to fill out the documents by the principal  
4550 broker with whom the branch broker or associate broker is affiliated.

4551 (b) A real estate licensee may fill out real estate forms prepared by legal counsel of the  
4552 buyer, seller, lessor, or lessee.

4553 (c) If the commission and the attorney general have not approved a specific form for

4554 the transaction, a principal broker, associate broker, or sales agent may fill out real estate forms  
4555 prepared by any legal counsel, including legal counsel retained by the brokerage to develop  
4556 these forms.

4557 (3) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah  
4558 Administrative Rulemaking Act, provide a process for the approval of a legal form under this  
4559 section by the commission and the attorney general.

4560 Section 87. Section **61-2f-307**, which is renumbered from Section 61-2-26 is  
4561 renumbered and amended to read:

4562 **[61-2-26]. 61-2f-307. Rulemaking required for offer or sale of an undivided**  
4563 **fractionalized long-term estate -- Disclosures -- Management agreement.**

4564 (1) (a) A licensee or certificate holder under this chapter who sells or offers to sell an  
4565 undivided fractionalized long-term estate shall comply with the disclosure requirements  
4566 imposed by rules made by the commission under this section.

4567 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
4568 commission shall make rules as to the timing, form, and substance of disclosures required to be  
4569 made by a licensee or certificate holder under this section.

4570 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
4571 commission shall make rules imposing requirements for a management agreement related to an  
4572 undivided fractionalized long-term estate that makes the offer or sale of the undivided  
4573 fractionalized long-term estate treated as a real estate transaction and not treated as an offer or  
4574 sale of a security under Chapter 1, Utah Uniform Securities Act.

4575 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
4576 commission shall make rules establishing:

4577 (a) the disclosures required in the sale or offer of an undivided fractionalized long-term  
4578 estate that is subject to a master lease;

4579 (b) requirements for the management of a master lease on an undivided fractionalized  
4580 long-term estate; and

4581 (c) the requirements on the structure of a master lease on an undivided fractionalized  
4582 long-term estate.

4583 Section 88. Section **61-2f-308**, which is renumbered from Section 61-2-27 is  
4584 renumbered and amended to read:

- 4585            ~~[61-2-27]~~.    **61-2f-308. Exclusive brokerage agreement.**
- 4586            (1) As used in this section:
- 4587            (a) "Client" means a person who makes an exclusive brokerage agreement with a
- 4588 principal broker under Subsection (1)(c).
- 4589            (b) "Closed" means that:
- 4590            (i) ~~[a] the~~ the documents required to be executed under the contract are executed;
- 4591            (ii) ~~[all monies]~~ the money required to be paid by either party under the contract ~~[are]~~
- 4592 is paid in the form of collected or cleared funds;
- 4593            (iii) the proceeds of any new loan are delivered by the lender to the seller; and
- 4594            (iv) ~~[a] the~~ the applicable documents are recorded in the office of the county recorder for
- 4595 the county in which the ~~[property]~~ real estate is located.
- 4596            (c) "Exclusive brokerage agreement" means a written agreement between a client and a
- 4597 principal broker:
- 4598            (i) (A) to list for sale, lease, or exchange:
- 4599            (I) real estate;
- 4600            (II) an option on real estate; or
- 4601            (III) an improvement on real estate; or
- 4602            (B) for representation in the purchase, lease, or exchange of:
- 4603            (I) real estate;
- 4604            (II) an option on real estate; or
- 4605            (III) an improvement on real estate;
- 4606            (ii) that gives the principal broker the sole right to act as the agent or representative of
- 4607 the client for the purchase, sale, lease, or exchange of:
- 4608            (A) real estate;
- 4609            (B) an option on real estate; or
- 4610            (C) an improvement on real estate; and
- 4611            (iii) that gives the principal broker the expectation of receiving valuable consideration
- 4612 in exchange for the principal broker's services.
- 4613            (2) (a) Except as provided in Subsection (2)(b), a principal broker subject to an
- 4614 exclusive brokerage agreement shall:
- 4615            (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or

4616 exchange the client's [~~property~~] real estate;

4617 (ii) assist the client in developing, communicating, and presenting offers, counteroffers,  
4618 and notices; and

4619 (iii) answer any question the client has concerning:

4620 (A) an offer;

4621 (B) a counteroffer;

4622 (C) a notice; and

4623 (D) a contingency.

4624 (b) A principal broker subject to an exclusive brokerage agreement need not comply  
4625 with Subsection (2)(a) after:

4626 (i) (A) an agreement for the sale, lease, or exchange of the real estate, option on real  
4627 estate, or improvement on real estate is[~~-(A)~~] signed;

4628 (B) [~~all~~] the contingencies related to the sale, lease, or exchange are satisfied or  
4629 waived; and

4630 (C) the sale, lease, or exchange is closed; or

4631 (ii) the exclusive brokerage agreement expires or terminates.

4632 (3) A principal broker who violates this section is subject to [~~Section 61-2-17~~] Sections  
4633 61-2f-404 and 61-2f-405.

4634 Section 89. Section **61-2f-401**, which is renumbered from Section 61-2-11 is  
4635 renumbered and amended to read:

4636 **Part 4. Enforcement**

4637 **~~[61-2-11].~~ 61-2f-401. Grounds for disciplinary action.**

4638 The following acts are unlawful for a person required to be licensed under this chapter:

4639 (1) (a) making a substantial misrepresentation;

4640 (b) making an intentional misrepresentation;

4641 (c) pursuing a continued and flagrant course of misrepresentation;

4642 (d) making a false representation or promise through an agent, sales agent, advertising,  
4643 or otherwise; or

4644 [~~(2)~~] (e) making a false representation or promise of a character likely to influence,  
4645 persuade, or induce;

4646 [~~(3)~~] pursuing a continued and flagrant course of misrepresentation, or of making false

4647 ~~promises through agents, sales agents, advertising, or otherwise;]~~  
 4648        ~~[(4)]~~ (2) acting for more than one party in a transaction without the informed consent  
 4649 of all parties;  
 4650        ~~[(5)]~~ (3) (a) acting as an associate broker or sales agent while not ~~[licensed]~~ affiliated  
 4651 with a ~~[licensed]~~ principal broker;  
 4652        (b) representing or attempting to represent a principal broker other than the principal  
 4653 broker with whom the person is affiliated; or  
 4654        (c) representing as sales agent or having a contractual relationship similar to that of  
 4655 sales agent with a person other than a ~~[licensed]~~ principal broker;  
 4656        ~~[(6)]~~ (4) (a) failing, within a reasonable time, to account for or to remit ~~[monies coming~~  
 4657 into the] money that belongs to another and comes into the person's possession ~~[that belong to~~  
 4658 others];  
 4659        (b) commingling ~~[the monies]~~ money described in Subsection ~~[(6)]~~ (4)(a) with the  
 4660 person's own ~~[monies]~~ money; or  
 4661        (c) diverting ~~[the monies]~~ money described in Subsection ~~[(6)]~~ (4)(a) from the purpose  
 4662 for which ~~[they were]~~ the money is received;  
 4663        ~~[(7)]~~ (5) paying or offering to pay valuable consideration, as defined by the  
 4664 commission, to a person not licensed under this chapter, except that valuable consideration  
 4665 may be shared:  
 4666        (a) with a ~~[licensed]~~ principal broker of another jurisdiction; or  
 4667        (b) as provided under:  
 4668        (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;  
 4669        (ii) Title 16, Chapter 11, Professional Corporation Act; or  
 4670        (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;  
 4671        ~~[(8)]~~ (6) being ~~[unworthy or]~~ incompetent to act as a principal broker, associate broker,  
 4672 or sales agent in such manner as to safeguard the interests of the public;  
 4673        ~~[(9)]~~ (7) failing to voluntarily furnish a copy of a document to all parties ~~[executing~~  
 4674 the] before and after the execution of a document;  
 4675        ~~[(10)]~~ (8) failing to keep and make available for inspection by the division a record of  
 4676 each transaction, including:  
 4677        (a) the names of buyers and sellers or lessees and lessors;

- 4678 (b) the identification of [~~the property~~] real estate;
- 4679 (c) the sale or rental price;
- 4680 (d) [~~monies~~] money received in trust;
- 4681 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- 4682 (f) any other information required by rule;
- 4683 [~~(11)~~] (9) failing to disclose, in writing, in the purchase, sale, or rental of [~~property~~]
- 4684 real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed
- 4685 principal;
- 4686 [~~(12) regardless of whether the crime is related to real estate,]~~
- 4687 (10) being convicted of a criminal offense involving moral turpitude within five years
- 4688 of the most recent application[;];
- 4689 (a) regardless of whether the criminal offense is related to real estate; and
- 4690 (b) including:
- 4691 [~~(a)~~] (i) a conviction based upon a plea of nolo contendere; or
- 4692 [~~(b)~~] (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
- 4693 [~~(13)~~] (11) advertising the availability of real estate or the services of a licensee in a
- 4694 false, misleading, or deceptive manner;
- 4695 [~~(14)~~] (12) in the case of a principal broker or a licensee who is a branch manager,
- 4696 failing to exercise reasonable supervision over the activities of the principal broker's or branch
- 4697 manager's [~~licensee~~] licensed or unlicensed staff;
- 4698 [~~(15)~~] (13) violating or disregarding:
- 4699 (a) this chapter;
- 4700 (b) an order of the commission; or
- 4701 (c) the rules adopted by the commission and the division;
- 4702 [~~(16)~~] (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a
- 4703 real estate transaction;
- 4704 [~~(17)~~] (15) any other conduct which constitutes dishonest dealing;
- 4705 [~~(18)~~] (16) unprofessional conduct as defined by statute or rule;
- 4706 [~~(19) on the basis of misconduct in a professional capacity that relates to character,~~
- 4707 honesty, integrity, or truthfulness,]
- 4708 (17) having one of the following suspended, revoked, surrendered, or cancelled on the



4709 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or  
 4710 truthfulness:

4711 (a) a real estate license, registration, or certificate issued by another jurisdiction; or

4712 (b) another [~~professional~~] license, registration, or certificate to engage in an occupation  
 4713 or profession issued by this state or another jurisdiction;

4714 [~~(20)~~] (18) failing to respond to a request by the division in an investigation authorized  
 4715 under this chapter, including:

4716 (a) failing to respond to a subpoena;

4717 (b) withholding evidence; or

4718 (c) failing to produce documents or records;

4719 [~~(21)~~] (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

4720 (a) providing a title insurance product or service without the approval required by  
 4721 Section 31A-2-405; or

4722 (b) knowingly providing false or misleading information in the statement required by  
 4723 Subsection 31A-2-405(2); or

4724 [~~(22)~~] (20) violating an independent contractor agreement between a principal broker  
 4725 and a sales agent as evidenced by a final judgment of a court.

4726 Section 90. Section ~~61-2f-402~~, which is renumbered from Section 61-2-11.5 is  
 4727 renumbered and amended to read:

4728 **[61-2-11.5]. 61-2f-402. Investigations.**

4729 (1) The division may make [~~any~~] an investigation within or outside of this state as the  
 4730 division considers necessary to determine whether [~~any~~] a person has violated, is violating, or  
 4731 is about to violate this chapter or any rule or order under this chapter.

4732 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms  
 4733 under this chapter, the division may require or permit [~~any~~] a person to file a statement in  
 4734 writing, under oath or otherwise as to [~~all~~] the facts and circumstances concerning the matter to  
 4735 be investigated.

4736 (3) For the purpose of the investigation described in Subsection (1), the division or  
 4737 [~~any~~] an employee designated by the division may:

4738 (a) administer an oath or affirmation;

4739 (b) subpoena witnesses and evidence;

4740 (c) take evidence;

4741 (d) require the production of a book, paper, contract, record, other document, or  
4742 information relevant to the investigation; and

4743 (e) serve a subpoena by certified mail.

4744 (4) (a) A person shall pay the costs incurred by the division to copy a book, paper,  
4745 contract, document, or record required under this chapter, including the costs incurred to copy  
4746 an electronic book, paper, contract, document, or record in a universally readable format.

4747 (b) If a person fails to pay the costs described in Subsection (4)(a), the person's license,  
4748 certification, or registration is automatically suspended:

4749 (i) beginning the day on which the payment of costs is due; and

4750 (ii) ending the day on which the costs are paid.

4751 Section 91. Section ~~61-2f-403~~, which is renumbered from Section 61-2-24 is  
4752 renumbered and amended to read:

4753 ~~[61-2-24]~~. **61-2f-403. Mishandling of trust funds.**

4754 (1) The division may audit principal brokers' trust accounts or other accounts in which  
4755 a licensee maintains trust ~~[funds]~~ money under this chapter. If the division's audit shows, in the  
4756 opinion of the division, gross mismanagement, commingling, or misuse of ~~[funds]~~ money, the  
4757 division, with the concurrence of the commission, may order a complete audit of the account  
4758 by a certified public accountant at the licensee's expense, or take other action in accordance  
4759 with Section ~~[61-2-12]~~ 61-2f-404.

4760 (2) The licensee may obtain agency review by the executive director or judicial review  
4761 of any division order.

4762 (3) (a) If it appears that a person has grossly mismanaged, commingled, or otherwise  
4763 misused trust ~~[funds]~~ money, the division, with or without prior administrative proceedings,  
4764 may bring an action:

4765 (i) in the district court of the district where;

4766 (A) the person resides [or];

4767 (B) the person maintains a place of business[;]; or [where]

4768 (C) the act or practice occurred or is about to occur[;]; and

4769 (ii) to enjoin the ~~[acts or practices]~~ act or practice and to enforce compliance with this  
4770 chapter or any rule or order under this chapter.

4771 (b) Upon a proper showing, ~~the~~ a court shall grant injunctive relief or a temporary  
 4772 restraining order, and may appoint a receiver or conservator. The division is not required to  
 4773 post a bond in any court proceeding.

4774 Section 92. Section ~~61-2f-404~~, which is renumbered from Section 61-2-12 is  
 4775 renumbered and amended to read:

4776 ~~[61-2-12]~~. **61-2f-404. Disciplinary action -- Judicial review.**

4777 (1) (a) On the basis of a violation of this chapter, the commission with the concurrence  
 4778 of the director, may issue an order:

4779 (i) imposing an educational requirement;

4780 (ii) imposing a civil penalty not to exceed the greater of:

4781 (A) ~~[\$2,500]~~ \$5,000 for each violation; or

4782 (B) the amount of any gain or economic benefit derived from each violation;

4783 (iii) taking any of the following actions related to a license, registration, or certificate:

4784 (A) revoking;

4785 (B) suspending;

4786 (C) placing on probation;

4787 (D) denying the renewal, reinstatement, or application for an original license,  
 4788 registration, or certificate; or

4789 (E) in the case of denial or revocation of a license, registration, or certificate, setting a  
 4790 waiting period for an applicant to apply for a license, registration, or certificate under this title;

4791 (iv) issuing a cease and desist order;

4792 (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the  
 4793 commission finds that the person complies with court ordered restitution; or

4794 (vi) doing any combination of Subsections (1)(a)(i) through (v).

4795 (b) (i) If the commission with the concurrence of the director issues an order that  
 4796 orders a fine or educational requirements as part of a disciplinary action against a person,  
 4797 including a stipulation and order, the commission shall state in the order the deadline by which  
 4798 the person shall comply with the fine or educational requirements.

4799 (ii) If a person fails to comply by the stated deadline:

4800 (A) the person's license, registration, or certificate:

4801 (I) beginning the day specified in the order as the deadline for compliance; and

4802 (II) ending the day on which the person complies in full with the order; and  
4803 (B) if the person fails to pay a fine required by an order, the division shall begin a  
4804 collection process:

4805 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,  
4806 Utah Administrative Rulemaking Act; and

4807 (II) subject to Title 63A, Chapter 8, Office of State Debt Collection.

4808 ~~[(b)]~~ (c) If a licensee is an active sales agent or active associate broker, the division  
4809 shall inform the principal broker with whom the licensee is affiliated of the charge and of the  
4810 time and place of any hearing.

4811 (2) (a) An applicant, certificate holder, licensee, registrant, or person aggrieved,  
4812 including the complainant, may obtain agency review by the executive director and judicial  
4813 review of any adverse ruling, order, or decision of the division.

4814 (b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and  
4815 the court finds that the state action was undertaken without substantial justification, the court  
4816 may award reasonable litigation expenses to the applicant, certificate holder, registrant, or  
4817 licensee as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to  
4818 Justice Act.

4819 (c) (i) An order, ruling, or decision of the division shall take effect and become  
4820 operative 30 days after the service of the order, ruling, or decision unless otherwise provided in  
4821 the order.

4822 (ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division may  
4823 stay enforcement of an order, ruling, or decision in accordance with Section 63G-4-405.

4824 (iii) An appeal is governed by the Utah Rules of Appellate Procedure.

4825 (3) The commission and the director shall comply with the procedures and  
4826 requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative  
4827 proceeding.

4828 Section 93. Section **61-2f-405**, which is renumbered from Section 61-2-17 is  
4829 renumbered and amended to read:

4830 ~~[61-2-17]~~. **61-2f-405**. **Criminal penalties for violation of chapter -- Other**  
4831 **penalties.**

4832 (1) (a) An individual required to be licensed under this chapter who violates this

4833 chapter, in addition to being subject to a license sanction or a fine ordered by the commission,  
4834 is, upon conviction of a first violation, guilty of a class A misdemeanor.

4835 (b) For a conviction under this Subsection (1)~~(a)~~, imprisonment shall be for a term  
4836 not to exceed six months.

4837 ~~[(b) If a violator of this chapter is a corporation, the corporation is, upon conviction of~~  
4838 ~~a first violation, guilty of a class A misdemeanor.]~~

4839 (2) (a) Upon conviction of a second or subsequent violation, an individual is guilty of a  
4840 third degree felony.

4841 (b) Imprisonment for a conviction under this Subsection (2)(a) shall be for a term not  
4842 to exceed two years.

4843 ~~[(b) If a corporation is convicted of a second or subsequent violation, the corporation is~~  
4844 ~~guilty of a third degree felony.]~~

4845 (3) An officer or agent of a corporation, ~~[or]~~ a member or agent of a partnership or  
4846 association, or an individual in a similar position of another type of entity who personally  
4847 participates in or is an accessory to any violation of this chapter by the ~~[corporation,~~  
4848 ~~partnership, or association;]~~ entity is subject to the penalties prescribed for an individual.

4849 (4) If a person receives money or its equivalent, as commission, compensation, or  
4850 profit by or in consequence of a violation of this chapter, that person is liable for an additional  
4851 penalty of not less than the amount of the money received and not more than three times the  
4852 amount of money received, as may be determined by the court. This penalty may be sued for in  
4853 any court of competent jurisdiction, and recovered by any person aggrieved for the person's  
4854 own use and benefit.

4855 (5) A fine imposed by the commission and the director under this chapter shall,  
4856 notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research, and  
4857 Recovery Fund to be used in a manner consistent with the requirements of ~~[Chapter 2a]~~ Part 5,  
4858 Real Estate Education, Research, and Recovery Fund Act.

4859 Section 94. Section ~~61-2f-406~~, which is renumbered from Section 61-2-13 is  
4860 renumbered and amended to read:

4861 ~~[61-2-13].~~ **61-2f-406. Grounds for revocation of principal broker's license --**  
4862 **Automatic inactivation of affiliated associate brokers and sales agents licenses.**

4863 (1) (a) An unlawful act or violation of this chapter committed by a person listed in

4864 Subsection (1)(b) is cause for:

- 4865 (i) the revocation, suspension, or probation of a principal broker's license; or
- 4866 (ii) the imposition of a fine against the principal broker in an amount not to exceed
- 4867 ~~[\$2,500]~~ \$5,000 per violation.

4868 (b) Subsection (1)(a) applies to an act or violation by any of the following:

- 4869 (i) a ~~[real-estate]~~ sales agent or associate broker employed by a ~~[licensed]~~ principal
- 4870 broker;
- 4871 (ii) a ~~[real-estate]~~ sales agent or associate broker engaged as an independent contractor
- 4872 by or on behalf of a ~~[licensed]~~ principal broker; or
- 4873 (iii) an employee, officer, or member of a ~~[licensed]~~ principal broker.

4874 (2) (a) The revocation or suspension of a principal broker license automatically

4875 inactivates an associate broker or sales agent license granted to ~~[a person]~~ an individual by

4876 reason of that ~~[person's]~~ individual's affiliation with the principal broker whose license is

4877 revoked or suspended, pending a change of principal broker affiliation.

4878 (b) A principal broker shall, before the effective date of a suspension or revocation of

4879 the principal broker's license, notify in writing every licensee affiliated with the principal

4880 broker of the revocation or suspension of the principal broker license.

4881 Section 95. Section ~~61-2f-407~~, which is renumbered from Section 61-2-21 is

4882 renumbered and amended to read:

4883 ~~[61-2-21].~~ **61-2f-407. Remedies and action for violations.**

4884 (1) (a) The director shall issue and serve upon a person an order directing that person to

4885 cease and desist from an act if:

- 4886 (i) the director has reason to believe that the person has been engaging, is about to
- 4887 engage, or is engaging in the act constituting a violation of this chapter; and
- 4888 (ii) it appears to the director that it would be in the public interest to stop the act.

4889 (b) Within 10 days after receiving the order, the person upon whom the order is served

4890 may request a hearing.

4891 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall

4892 remain in effect.

4893 (d) If a request for a hearing is made, the division shall follow the procedures and

4894 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

- 4895 (2) (a) After a hearing requested under Subsection (1), if the commission and the  
4896 director agree that an act of the person violates this chapter, the director:
- 4897 (i) shall issue an order making the order issued under Subsection (1) permanent; and  
4898 (ii) may impose another disciplinary action under Section [~~61-2-12~~] 61-2f-404.
- 4899 (b) The director shall file suit in the name of the Department of Commerce and the  
4900 Division of Real Estate, in the district court in the county in which an act described in  
4901 Subsection (1) occurs or where the person resides or carries on business, to enjoin and restrain  
4902 the person from violating this chapter if:
- 4903 (i) (A) a hearing is not requested under Subsection (1); and  
4904 (B) the person fails to cease the act described in Subsection (1); or  
4905 (ii) after discontinuing the act described in Subsection (1), the person again  
4906 commences the act.
- 4907 (c) A district court of this state has jurisdiction of an action brought under this section.  
4908 (d) Upon a proper showing in an action brought under this section or upon a conviction  
4909 under Section 76-6-1203, the court may:
- 4910 (i) issue a permanent or temporary, prohibitory or mandatory injunction;  
4911 (ii) issue a restraining order or writ of mandamus;  
4912 (iii) enter a declaratory judgment;  
4913 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;  
4914 (v) order disgorgement;  
4915 (vi) order rescission;  
4916 (vii) impose a civil penalty not to exceed the greater of:  
4917 (A) [~~\$2,500~~] \$5,000 for each violation; or  
4918 (B) the amount of any gain or economic benefit derived from a violation; and  
4919 (viii) enter any other relief the court considers just.
- 4920 (e) The court may not require the division to post a bond in an action brought under  
4921 this Subsection (2).
- 4922 (3) [~~Any~~] A license, certificate, or registration issued by the division to any person [~~or~~  
4923 entity] convicted of a violation of Section 76-6-1203 is automatically revoked.
- 4924 (4) A remedy or action provided in this section does not limit, interfere with, or prevent  
4925 the prosecution of another remedy or action, including a criminal proceeding.

4926 Section 96. Section **61-2f-408**, which is renumbered from Section 61-2-13.5 is  
 4927 renumbered and amended to read:

4928 **[61-2-13-5]. 61-2f-408. Court-ordered discipline.**

4929 The division shall promptly withhold, suspend, restrict, or reinstate the use of a license  
 4930 issued under this chapter if so ordered by a court.

4931 Section 97. Section **61-2f-409**, which is renumbered from Section 61-2-18 is  
 4932 renumbered and amended to read:

4933 **[61-2-18]. 61-2f-409. Actions for recovery of compensation restricted.**

4934 (1) ~~[No]~~ A person may not bring or maintain an action in any court of this state for the  
 4935 recovery of a commission, fee, or compensation for any act done or service rendered which is  
 4936 prohibited under this chapter to other than ~~[licensed]~~ principal brokers, unless the person was  
 4937 ~~[duly]~~ licensed as a principal broker at the time of the doing of the act or rendering the service.

4938 (2) ~~[No]~~ (a) A sales agent or associate broker may not sue in ~~[his]~~ that individual's  
 4939 own name for the recovery of a fee, commission, or compensation for services as a sales agent  
 4940 or associate broker unless the action is against the principal broker with whom ~~[he]~~ the sales  
 4941 agent or associate broker is or was ~~[licensed. Any]~~ affiliated.

4942 (b) An action for the recovery of a fee, commission, or other compensation may only  
 4943 be instituted and brought by the principal broker with whom ~~[the]~~ a sales agent or associate  
 4944 broker is affiliated.

4945 Section 98. Section **61-2f-501**, which is renumbered from Section 61-2a-1 is  
 4946 renumbered and amended to read:

4947 **Part 5. Real Estate Education, Research, and Recovery Fund Act**

4948 **[61-2a-1]. 61-2f-501. Title.**

4949 This ~~[act shall be known and may be cited]~~ part is know as the "Real Estate Education,  
 4950 Research, and Recovery Fund Act."

4951 Section 99. Section **61-2f-502**, which is renumbered from Section 61-2a-2 is  
 4952 renumbered and amended to read:

4953 **[61-2a-2]. 61-2f-502. Definitions.**

4954 ~~[(1) The purposes of this chapter are as follows:]~~

4955 ~~[(a) (i) This chapter creates the Real Estate Education, Research, and Recovery Fund to~~  
 4956 ~~reimburse the public out of the fund for damages up to \$15,000 caused by a real estate licensee~~



4957 in a real estate transaction as provided in Subsection 61-2a-5(1).]

4958        ~~[(ii) This chapter applies to damages caused by an individual licensee. Reimbursement~~  
 4959 ~~may not be made for a judgment against a corporation, partnership, association, or other legal~~  
 4960 ~~entity.]~~

4961        ~~[(b) This chapter provides revenue for improving the real estate profession through~~  
 4962 ~~education and research with the goal of making licensees more responsible to the public.]~~

4963        ~~[(2) For purposes of this chapter:]~~

4964        ~~[(a) "Commission" means the Real Estate Commission.]~~

4965        ~~[(b) "Division" means the Division of Real Estate.]~~

4966        For purposes of this part:

4967        (1) "Civil judgment" means a judgment in a civil action that:

4968        (a) is awarded in an action brought against a real estate licensee on the basis of fraud,  
 4969 misrepresentation, or deceit in a residential mortgage loan transaction; and

4970        (b) awards actual damages.

4971        (2) "Criminal restitution judgment" means a judgment that, in accordance with the  
 4972 Utah Code of Criminal Procedure, orders criminal restitution to a person and against a real  
 4973 estate licensee for a criminal offense involving fraud, misrepresentation, or deceit in a  
 4974 residential mortgage loan transaction.

4975        (3) "Final judgment" means one of the following judgments upon termination of the  
 4976 proceedings related to the judgment, including appeals:

4977        (a) a civil judgment; or

4978        (b) a criminal restitution judgment.

4979        ~~[(c)]~~ (4) "Fund" means the Real Estate Education, Research, and Recovery Fund  
 4980 created in Section ~~[61-2a-3]~~ 61-2f-503.

4981        ~~[(d) "Judgment" includes a criminal restitution judgment award.]~~

4982        Section 100. Section **61-2f-503**, which is renumbered from Section 61-2a-3 is  
 4983 renumbered and amended to read:

4984        ~~[61-2a-3].~~     **61-2f-503. Education, Research, and Recovery Fund.**

4985        (1) (a) There is created a restricted special revenue fund ~~[to be]~~ known as the "Real  
 4986 Estate Education, Research, and Recovery Fund."

4987        (b) The actual interest earned on the fund shall be deposited into the fund.

4988 ~~[(2) At the commencement of each fiscal year, \$100,000 shall be available in the fund~~  
 4989 ~~for satisfying judgments rendered against a person licensed under Title 61, Chapter 2, Division~~  
 4990 ~~of Real Estate.]~~

4991 (2) The money in the fund includes:

4992 (a) a fee imposed under Section 61-2f-505; and

4993 (b) interest described in Subsection (1)(b).

4994 (3) The division shall administer the fund to:

4995 (a) reimburse the public for damages caused in a real estate transaction by an

4996 individual licensed under this chapter; and

4997 (b) in accordance with Section 61-2f-504:

4998 (i) investigate violations of this chapter related to fraud, misrepresentation, or deceit; or

4999 (ii) provide revenue for improving the real estate profession through education and

5000 research with the goal of making licensees more responsible to the public.

5001 (4) This part applies to damages caused by an individual licensee. Reimbursement

5002 may not be made for a final judgment against an entity.

5003 (5) At the beginning of each fiscal year, the division shall make available \$100,000 in

5004 the fund to satisfy final judgments rendered against a person licensed under this chapter.

5005 Section 101. Section ~~61-2f-504~~, which is renumbered from Section 61-2a-12 is

5006 renumbered and amended to read:

5007 ~~[61-2a-12].~~ **61-2f-504. Use of money.**

5008 (1) Money accumulated in the fund in excess of \$100,000 shall be set aside and

5009 segregated to be used by the division to:

5010 (a) investigate violations of this chapter [~~or Chapter 2, Division of Real Estate,~~] related

5011 to fraud, misrepresentation, or deceit; and

5012 (b) advance education and research in the field of real estate.

5013 (2) The division may [~~only~~] use the [~~excess monies~~] money described in Subsection (1)

5014 only in a manner consistent with Subsection (1), including for [~~courses~~] a course:

5015 (a) sponsored by the division;

5016 (b) offered by the division in conjunction with any university or college in the state; or

5017 (c) provided for by contracting for a particular research project in the field of real estate

5018 for the state.

5019 Section 102. Section **61-2f-505**, which is renumbered from Section 61-2a-4 is  
5020 renumbered and amended to read:

5021 ~~[61-2a-4].~~ **61-2f-505. Additional license fee.**

5022 (1) ~~[A person]~~ An individual who applies for or renews a ~~[real estate]~~ principal broker  
5023 ~~[or associate broker]~~ license shall pay, in addition to the application or renewal fee, a  
5024 reasonable annual fee of up to \$18, as determined by the division with the concurrence of the  
5025 commission. An individual who is an associate broker is required to pay the fee under this  
5026 Subsection (1).

5027 (2) ~~[A person]~~ An individual who applies for or renews a ~~[real estate]~~ sales agent  
5028 license shall pay in addition to the application or renewal fee a reasonable annual fee of up to  
5029 \$12, as determined by the division with the concurrence of the commission.

5030 (3) Notwithstanding Section 13-1-2, the additional fees under this section shall be paid  
5031 into the fund ~~[to be used for the purposes of this chapter].~~

5032 Section 103. Section **61-2f-506**, which is renumbered from Section 61-2a-5 is  
5033 renumbered and amended to read:

5034 ~~[61-2a-5].~~ **61-2f-506. Procedure to make a claim against the fund.**

5035 (1) ~~[(a) Except as provided in Subsection (6), a]~~ A person may bring a claim against  
5036 the fund ~~[only if the person sends]~~ if:

5037 (a) the person obtains a final judgment;

5038 (b) the person complies with the requirements under this part;

5039 (c) the person is not substantially complicit in the fraud, misrepresentation, or deceit  
5040 that is the basis of the claim; and

5041 (d) the final judgment that is the basis for the claim:

5042 (i) has not been discharged in bankruptcy; and

5043 (ii) when a bankruptcy proceeding is open or commenced during the pendency of the  
5044 claim, the person obtains an order from the bankruptcy court declaring the final judgment and  
5045 related debt to be nondischargeable.

5046 (2) (a) A person may not bring a claim against the fund for money owed under a civil  
5047 judgment unless, within 10 business days of the day on which the person brings the civil action  
5048 that results in the civil judgment, the person sends to the division a signed notification ~~[to the~~  
5049 ~~division at the time the person files an action against a real estate licensee]~~ alleging fraud,

5050 misrepresentation, or deceit by a real estate licensee.

5051 (b) Within 30 days ~~[of receipt of the notice,]~~ of the day on which the division receives  
5052 a notice under Subsection (1), the division has an unconditional right to intervene in the civil  
5053 action.

5054 ~~[(c) If the person making a claim against the fund obtains a final judgment in a court of~~  
5055 ~~competent jurisdiction in this state against the licensee based upon fraud, misrepresentation, or~~  
5056 ~~deceit in a real estate transaction, the person making the claim may, upon termination of all~~  
5057 ~~proceedings including appeals, file]~~

5058 (3) (a) After obtaining a final judgment, to file a claim against the fund, a person shall:

5059 (i) file a verified petition in the court where the final judgment [was] is entered [for]  
5060 seeking an order directing payment from the fund [for the] of an amount equal to the  
5061 uncollected actual damages [included in the judgment and unpaid:] owed under the final  
5062 judgment that are unpaid;

5063 (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the  
5064 division; and

5065 (iii) file a copy of the affidavit of service of the verified petition with the court.

5066 ~~[(d)]~~ (b) Recovery from the fund may not include:

5067 (i) punitive damages;

5068 (ii) attorney fees;

5069 (iii) interest; or

5070 (iv) court costs.

5071 ~~[(e)]~~ (c) Regardless of the number of claimants or parcels of real estate involved in a  
5072 residential real estate transaction, the liability of the fund may not exceed:

5073 (i) \$15,000 for a single transaction; and

5074 (ii) \$50,000 for one licensee.

5075 ~~[(2) A copy of the petition shall be served upon the division, and an affidavit of the~~  
5076 ~~service shall be filed with the court.]~~

5077 ~~[(3) The]~~ (4) A court shall conduct a hearing on [the] a petition [within 30 days after  
5078 service. The petitioner shall recover from the fund only if the petitioner shows all of the  
5079 following:] filed under Subsection (3) as scheduled by the court.

5080 (5) Subject to Subsection (6), a court may order payment from the fund under this

5081 section only if the person who files the petition shows that the person:

5082 (a) ~~[the petitioner]~~ is not;

5083 (i) in the case of a civil judgment, the spouse of the judgment debtor ~~[or the]~~;

5084 (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or

5085 (iii) a personal representative of ~~[the spouse]~~ an individual described in Subsection  
5086 (5)(a)(i) or (ii);

5087 (b) ~~[the petitioner has complied]~~ is in compliance with this chapter;

5088 (c) ~~[the petitioner has obtained]~~ is owed damages under a final judgment that:

5089 (i) is issued by the court in the manner prescribed under this section~~[- indicating]~~; and

5090 (ii) indicates the amount of the final judgment awarded;

5091 (d) ~~[the petitioner]~~ has proved the amount still owing on the final judgment ~~[at]~~ on the  
5092 date ~~[of]~~ the petition is filed;

5093 (e) (i) (A) ~~[the petitioner]~~ has had a writ of execution issued upon the final judgment~~[-]~~;  
5094 and

5095 (B) has received a return made by the officer executing the writ ~~[has made a return]~~  
5096 showing that no property subject to execution in satisfaction of the final judgment could be  
5097 found; or

5098 ~~[(f)]~~ (ii) if execution is levied against the property of the judgment debtor or criminal  
5099 defendant:

5100 ~~[(i) that the amount realized was insufficient]~~

5101 (A) has not realized an amount sufficient to satisfy the final judgment; and

5102 ~~[(ii) the amount realized and the]~~

5103 (B) is owed a specific balance remaining on the final judgment after application of the  
5104 amount realized;

5105 ~~[(g) the petitioner]~~ (f) has made reasonable searches and inquiries to ascertain whether  
5106 the judgment debtor or criminal defendant has any interest in property, real or personal, that  
5107 may satisfy the final judgment; and

5108 ~~[(h) the petitioner]~~ (g) has exercised reasonable diligence to secure payment of the  
5109 final judgment from the assets of the judgment debtor or criminal defendant.

5110 ~~[(4)]~~ (6) If ~~[the petitioner]~~ a person satisfies the court under Subsection (5) that it is not  
5111 practicable for the petitioner to comply with one or more of the requirements enumerated in

5112 Subsections ~~[(3)]~~ (5)(e) through ~~[(4)]~~ (g), the court may waive those requirements.

5113 ~~[(5) (a) A judgment that is the basis for a claim against the fund may not have been~~  
5114 ~~discharged in bankruptcy.]~~

5115 ~~[(b) In the case of a bankruptcy proceeding that is still open or that is commenced~~  
5116 ~~during the pendency of the claim, the claimant shall obtain an order from the bankruptcy court~~  
5117 ~~declaring the judgment and debt to be nondischargeable.]~~

5118 ~~[(6) A person may not bring a claim against the fund if the person is substantially~~  
5119 ~~complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.]~~

5120 Section 104. Section **61-2f-507**, which is renumbered from Section 61-2a-6 is  
5121 renumbered and amended to read:

5122 **[61-2a-6]. 61-2f-507. Division authority to act upon receipt of petition.**

5123 ~~[(1) Upon receipt of a petition as required by Section 61-2a-5, the division may answer,~~  
5124 ~~initiate review proceedings of its own, or]~~

5125 (1) When the division is served a petition under Section 61-2f-506, the division may:

5126 (a) file an answer to the petition in the court;

5127 (b) initiate a review proceeding conducted by the division; or

5128 (c) appear in any proceeding in the name of the defendant to the action or on behalf of  
5129 the fund.

5130 ~~[(2) The division may, subject to court approval, compromise a claim based upon the~~  
5131 ~~application of a petitioner.]~~

5132 (2) The division may settle a claim against the fund if:

5133 (a) the person who brings the claim requests a settlement; and

5134 (b) the court in which the petition is filed approves the settlement.

5135 Section 105. Section **61-2f-508**, which is renumbered from Section 61-2a-7 is  
5136 renumbered and amended to read:

5137 **[61-2a-7]. 61-2f-508. Court determination and order.**

5138 If ~~[the]~~ a court determines that ~~[a claim should be levied against that portion of the fund~~  
5139 ~~allocated for the purpose of carrying out the provisions of this chapter,]~~ the fund should pay a  
5140 claim under this part, in its order the court shall ~~[enter an order directed to]~~ direct the division  
5141 ~~[requiring payment from the fund of]~~ to pay from the fund that portion of the ~~[petitioner's]~~ final  
5142 judgment that is payable from the fund ~~[pursuant to Section 61-2a-5]~~ in accordance with

5143 Section 61-2f-506.

5144 Section 106. Section **61-2f-509**, which is renumbered from Section 61-2a-8 is  
5145 renumbered and amended to read:

5146 ~~[61-2a-8].~~ **61-2f-509. Insufficient funds to satisfy judgments -- Procedure and**  
5147 **interest.**

5148 If ~~[the]~~ money deposited in the fund and allotted for satisfying ~~[judgments against~~  
5149 ~~licensees]~~ a final judgment against a real estate licensee is insufficient to satisfy ~~[any~~  
5150 ~~authorized claim for payment, the division shall,]~~ an order issued in accordance with Section  
5151 61-2f-508, when sufficient money ~~[has been]~~ is deposited in the fund, the division shall:

5152 (1) satisfy the unpaid claims in the order that ~~[they were]~~ the unpaid claims are  
5153 originally filed~~[, together with]; and~~

5154 (2) pay with the claim accumulated interest at the rate of 8% per annum.

5155 Section 107. Section **61-2f-510**, which is renumbered from Section 61-2a-9 is  
5156 renumbered and amended to read:

5157 ~~[61-2a-9].~~ **61-2f-510. Division subrogated to judgment creditor -- Authority to**  
5158 **revoke license.**

5159 (1) (a) If the division ~~[makes payment from the fund to a judgment creditor, the~~  
5160 ~~division shall be]~~ pays a claim against the fund in accordance with this chapter, the division is  
5161 subrogated to the rights of the ~~[judgment creditor]~~ person who is paid the claim for the amounts  
5162 paid out of the fund ~~[and any amount and].~~

5163 (b) The division shall deposit in the fund any amount and interest recovered by the  
5164 division ~~[shall be deposited in the fund]~~ under this part.

5165 (2) (a) The license of a real estate licensee for whom payment from the fund is made  
5166 under this chapter shall be automatically revoked.

5167 (b) ~~[A licensee]~~ A person whose real estate license is revoked under Subsection (2)(a)  
5168 may not apply for a new license ~~[until]~~ under this chapter until the person pays in full:

5169 (i) the amount paid ~~[out on the licensee's account, plus]~~ by the fund for a claim that is  
5170 based on a final judgment against the person; and

5171 (ii) interest at a rate determined by the division with the concurrence of the  
5172 commission~~[, is repaid in full].~~

5173 Section 108. Section **61-2f-511**, which is renumbered from Section 61-2a-11 is

5174 renumbered and amended to read:

5175 ~~[61-2a-11].~~ **61-2f-511. Authority to take disciplinary action.**

5176 (1) ~~[Nothing contained in this chapter shall]~~ This part does not limit the authority of  
5177 the director of the division to take disciplinary action against a real estate licensee for a  
5178 violation of ~~[Chapter 2, Division of Real Estate;]~~ this chapter or of the rules of the commission  
5179 and division.

5180 (2) ~~[The repayment in full of all obligations to the fund by a licensee]~~ A real estate  
5181 licensee's payment of all the obligations of the real estate licensee to the fund does not nullify  
5182 or modify the effect of any other disciplinary proceeding brought pursuant to ~~[Chapter 2,~~  
5183 ~~Division of Real Estate;]~~ this chapter or the rules of the commission.

5184 Section 109. Section **61-2f-512**, which is renumbered from Section 61-2a-10 is  
5185 renumbered and amended to read:

5186 ~~[61-2a-10].~~ **61-2f-512. Failure to comply with provisions constitutes a waiver.**

5187 ~~[The failure of any person]~~ A person's failure to comply with ~~[the provisions of this~~  
5188 ~~chapter shall constitute]~~ this part constitutes a waiver of any ~~[rights provided under it]~~ right  
5189 under this part.

5190 Section 110. Section **63G-2-302** is amended to read:

5191 **63G-2-302. Private records.**

5192 (1) The following records are private:

5193 (a) records concerning an individual's eligibility for unemployment insurance benefits,  
5194 social services, welfare benefits, or the determination of benefit levels;

5195 (b) records containing data on individuals describing medical history, diagnosis,  
5196 condition, treatment, evaluation, or similar medical data;

5197 (c) records of publicly funded libraries that when examined alone or with other records  
5198 identify a patron;

5199 (d) records received or generated for a Senate or House Ethics Committee concerning  
5200 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the  
5201 meeting, if the ethics committee meeting was closed to the public;

5202 (e) records received or generated for a Senate confirmation committee concerning  
5203 character, professional competence, or physical or mental health of an individual:

5204 (i) if prior to the meeting, the chair of the committee determines release of the records:



5205 (A) reasonably could be expected to interfere with the investigation undertaken by the  
5206 committee; or

5207 (B) would create a danger of depriving a person of a right to a fair proceeding or  
5208 impartial hearing; and

5209 (ii) after the meeting, if the meeting was closed to the public;

5210 (f) employment records concerning a current or former employee of, or applicant for  
5211 employment with, a governmental entity that would disclose that individual's home address,  
5212 home telephone number, Social Security number, insurance coverage, marital status, or payroll  
5213 deductions;

5214 (g) records or parts of records under Section 63G-2-303 that a current or former  
5215 employee identifies as private according to the requirements of that section;

5216 (h) that part of a record indicating a person's Social Security number or federal  
5217 employer identification number if provided under Section 31A-23a-104, 31A-25-202,  
5218 31A-26-202, 58-1-301, 61-1-4, or ~~[61-2-6]~~ 61-2f-203;

5219 (i) that part of a voter registration record identifying a voter's driver license or  
5220 identification card number, Social Security number, or last four digits of the Social Security  
5221 number;

5222 (j) a record that:

5223 (i) contains information about an individual;

5224 (ii) is voluntarily provided by the individual; and

5225 (iii) goes into an electronic database that:

5226 (A) is designated by and administered under the authority of the Chief Information  
5227 Officer; and

5228 (B) acts as a repository of information about the individual that can be electronically  
5229 retrieved and used to facilitate the individual's online interaction with a state agency;

5230 (k) information provided to the Commissioner of Insurance under:

5231 (i) Subsection 31A-23a-115(2)(a);

5232 (ii) Subsection 31A-23a-302(3); or

5233 (iii) Subsection 31A-26-210(3);

5234 (l) information obtained through a criminal background check under Title 11, Chapter  
5235 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

- 5236 (m) information provided by an offender that is:  
5237 (i) required by the registration requirements of Section 77-27-21.5; and  
5238 (ii) not required to be made available to the public under Subsection 77-27-21.5(27);  
5239 and  
5240 (n) a statement and any supporting documentation filed with the attorney general in  
5241 accordance with Section 34-45-107, if the federal law or action supporting the filing involves  
5242 homeland security.
- 5243 (2) The following records are private if properly classified by a governmental entity:  
5244 (a) records concerning a current or former employee of, or applicant for employment  
5245 with a governmental entity, including performance evaluations and personal status information  
5246 such as race, religion, or disabilities, but not including records that are public under Subsection  
5247 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);  
5248 (b) records describing an individual's finances, except that the following are public:  
5249 (i) records described in Subsection 63G-2-301(2);  
5250 (ii) information provided to the governmental entity for the purpose of complying with  
5251 a financial assurance requirement; or  
5252 (iii) records that must be disclosed in accordance with another statute;  
5253 (c) records of independent state agencies if the disclosure of those records would  
5254 conflict with the fiduciary obligations of the agency;  
5255 (d) other records containing data on individuals the disclosure of which constitutes a  
5256 clearly unwarranted invasion of personal privacy;  
5257 (e) records provided by the United States or by a government entity outside the state  
5258 that are given with the requirement that the records be managed as private records, if the  
5259 providing entity states in writing that the record would not be subject to public disclosure if  
5260 retained by it; and  
5261 (f) any portion of a record in the custody of the Division of Aging and Adult Services,  
5262 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a  
5263 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.
- 5264 (3) (a) As used in this Subsection (3), "medical records" means medical reports,  
5265 records, statements, history, diagnosis, condition, treatment, and evaluation.  
5266 (b) Medical records in the possession of the University of Utah Hospital, its clinics,

5267 doctors, or affiliated entities are not private records or controlled records under Section  
5268 63G-2-304 when the records are sought:

5269 (i) in connection with any legal or administrative proceeding in which the patient's  
5270 physical, mental, or emotional condition is an element of any claim or defense; or

5271 (ii) after a patient's death, in any legal or administrative proceeding in which any party  
5272 relies upon the condition as an element of the claim or defense.

5273 (c) Medical records are subject to production in a legal or administrative proceeding  
5274 according to state or federal statutes or rules of procedure and evidence as if the medical  
5275 records were in the possession of a nongovernmental medical care provider.

5276 Section 111. Section **63J-1-602** is amended to read:

5277 **63J-1-602. Nonlapsing accounts and funds.**

5278 (1) The following revenue collections, appropriations from a fund or account, and  
5279 appropriations to a program are nonlapsing:

5280 (a) appropriations made to the Legislature and its committees;

5281 (b) funds collected by the grain grading program, as provided in Section 4-2-2;

5282 (c) the Salinity Offset Fund created in Section 4-2-8.5;

5283 (d) the Invasive Species Mitigation Fund created in Section 4-2-8.7;

5284 (e) funds collected by pesticide dealer license registration fees, as provided in Section  
5285 4-14-3;

5286 (f) funds collected by pesticide applicator business registration fees, as provided in  
5287 Section 4-14-13;

5288 (g) the Rangeland Improvement Fund created in Section 4-20-2;

5289 (h) funds deposited as dedicated credits under the Insect Infestation Emergency Control  
5290 Act, as provided in Section 4-35-6;

5291 (i) the Percent-for-Art Program created in Section 9-6-404;

5292 (j) the Centennial History Fund created in Section 9-8-604;

5293 (k) the Uintah Basin Revitalization Fund, as provided in Section 9-10-108;

5294 (l) the Navajo Revitalization Fund created in Section 9-11-104;

5295 (m) the LeRay McAllister Critical Land Conservation Program created in Section  
5296 11-38-301;

5297 (n) the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403;

5298 (o) fees deposited as dedicated credits for hazardous waste plan reviews, as provided in  
5299 Section 19-6-120;

5300 (p) an appropriation made to the Division of Wildlife Resources for the appraisal and  
5301 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6;

5302 (q) award monies under the Crime Reduction Assistance Program, as provided under  
5303 Section 24-1-19;

5304 (r) funds collected from the emergency medical services grant program, as provided in  
5305 Section 26-8a-207;

5306 (s) fees and other funding available to purchase training equipment and to administer  
5307 tests and conduct quality assurance reviews, as provided in Section 26-8a-208;

5308 (t) funds collected as a result of a sanction under Section 1919 of Title XIX of the  
5309 federal Social Security Act, as provided in Section 26-18-3;

5310 (u) the Utah Health Care Workforce Financial Assistance Program created in Section  
5311 26-46-102;

5312 (v) monies collected from subscription fees for publications prepared or distributed by  
5313 the insurance commissioner, as provided in Section 31A-2-208;

5314 (w) monies received by the Insurance Department for administering, investigating  
5315 under, and enforcing the Insurance Fraud Act, as provided in Section 31A-31-108;

5316 (x) certain monies received for penalties paid under the Insurance Fraud Act, as  
5317 provided in Section 31A-31-109;

5318 (y) the fund for operating the state's Federal Health Care Tax Credit Program, as  
5319 provided in Section 31A-38-104;

5320 (z) certain funds in the Department of Workforce Services' program for the education,  
5321 training, and transitional counseling of displaced homemakers, as provided in Section  
5322 35A-3-114;

5323 (aa) the Employment Security Administration Fund created in Section 35A-4-505;

5324 (bb) the Special Administrative Expense Fund created in Section 35A-4-506;

5325 (cc) funding for a new program or agency that is designated as nonlapsing under  
5326 Section 36-24-101;

5327 (dd) the Oil and Gas Conservation Account created in Section 40-6-14.5;

5328 (ee) funds available to the State Tax Commission for purchase and distribution of

- 5329 license plates and decals, as provided in Section 41-1a-1201;
- 5330 (ff) certain fees for the cost of electronic payments under the Motor Vehicle Act, as
- 5331 provided in Section 41-1a-1221;
- 5332 (gg) certain fees collected for administering and enforcing the Motor Vehicle Business
- 5333 Regulation Act, as provided in Section 41-3-601;
- 5334 (hh) certain fees for the cost of electronic payments under the Motor Vehicle Business
- 5335 Regulation Act, as provided in Section 41-3-604;
- 5336 (ii) the Off-Highway Access and Education Restricted Account created in Section
- 5337 41-22-19.5;
- 5338 (jj) certain fees for the cost of electronic payments under the Motor Vehicle Act, as
- 5339 provided in Section 41-22-36;
- 5340 (kk) monies collected under the Notaries Public Reform Act, as provided under
- 5341 46-1-23;
- 5342 (ll) certain funds associated with the Law Enforcement Operations Account, as
- 5343 provided in Section 51-9-411;
- 5344 (mm) the Public Safety Honoring Heroes Restricted Account created in Section
- 5345 53-1-118;
- 5346 (nn) funding for the Search and Rescue Financial Assistance Program, as provided in
- 5347 Section 53-2-107;
- 5348 (oo) appropriations made to the Department of Public Safety from the Department of
- 5349 Public Safety Restricted Account, as provided in Section 53-3-106;
- 5350 (pp) appropriations to the Motorcycle Rider Education Program, as provided in Section
- 5351 53-3-905;
- 5352 (qq) fees collected by the State Fire Marshal Division under the Utah Fire Prevention
- 5353 and Safety Act, as provided in Section 53-7-314;
- 5354 (rr) the DNA Specimen Restricted Account created in Section 53-10-407;
- 5355 (ss) the minimum school program, as provided in Section 53A-17a-105;
- 5356 (tt) certain funds appropriated from the Uniform School Fund to the State Board of
- 5357 Education for new teacher bonus and performance-based compensation plans, as provided in
- 5358 Section 53A-17a-148;
- 5359 (uu) certain funds appropriated from the Uniform School Fund to the State Board of

5360 Education for implementation of proposals to improve mathematics achievement test scores, as  
5361 provided in Section 53A-17a-152;

5362 (vv) the School Building Revolving Account created in Section 53A-21-401;

5363 (ww) monies received by the State Office of Rehabilitation for the sale of certain  
5364 products or services, as provided in Section 53A-24-105;

5365 (xx) the State Board of Regents, as provided in Section 53B-6-104;

5366 (yy) certain funds appropriated from the General Fund to the State Board of Regents  
5367 for teacher preparation programs, as provided in Section 53B-6-104;

5368 (zz) a certain portion of monies collected for administrative costs under the School  
5369 Institutional Trust Lands Management Act, as provided under Section 53C-3-202;

5370 (aaa) certain surcharges on residence and business telecommunications access lines  
5371 imposed by the Public Service Commission, as provided in Section 54-8b-10;

5372 (bbb) certain fines collected by the Division of Occupational and Professional  
5373 Licensing for violation of unlawful or unprofessional conduct that are used for education and  
5374 enforcement purposes, as provided in Section 58-17b-505;

5375 (ccc) the Nurse Education and Enforcement Fund created in Section 58-31b-103;

5376 (ddd) funding of the controlled substance database, as provided in Section 58-37-7.7;

5377 (eee) the Certified Nurse Midwife Education and Enforcement Fund created in Section  
5378 58-44a-103;

5379 (fff) funding for the building inspector's education program, as provided in Section  
5380 58-56-9;

5381 (ggg) certain fines collected by the Division of Occupational and Professional  
5382 Licensing for use in education and enforcement of the Security Personnel Licensing Act, as  
5383 provided in Section 58-63-103;

5384 (hhh) the Professional Geologist Education and Enforcement Fund created in Section  
5385 58-76-103;

5386 (iii) certain monies in the Water Resources Conservation and Development Fund, as  
5387 provided in Section 59-12-103;

5388 (jjj) funds paid to the Division of Real Estate for the cost of a criminal background  
5389 check for principal broker and sales agent licenses, as provided in Section [~~61-2-9~~] 61-2f-204;

5390 (kkk) the Utah Housing Opportunity Restricted Account created in Section [~~61-2-28~~]

5391 61-2-204;

5392 (lll) funds paid to the Division of Real Estate for the cost of a criminal background  
5393 check for a mortgage loan license, as provided in Section 61-2c-202;

5394 (mmm) funds paid to the Division of Real Estate in relation to examination of records  
5395 in an investigation, as provided in Section 61-2c-401;

5396 (nnn) certain funds donated to the Department of Human Services, as provided in  
5397 Section 62A-1-111;

5398 (ooo) certain funds donated to the Division of Child and Family Services, as provided  
5399 in Section 62A-4a-110;

5400 (ppp) the Mental Health Therapist Grant and Scholarship Program, as provided in  
5401 Section 62A-13-109;

5402 (qqq) assessments for DUI violations that are forwarded to an account created by a  
5403 county treasurer, as provided in Section 62A-15-503;

5404 (rrr) appropriations to the Division of Services for People with Disabilities, as provided  
5405 in Section 62A-5-102;

5406 (sss) certain donations to the Division of Substance Abuse and Mental Health, as  
5407 provided in Section 62A-15-103;

5408 (ttt) certain funds received by the Division of Parks and Recreation from the sale or  
5409 disposal of buffalo, as provided under Section 63-11-19.2;

5410 (uuu) revenue for golf user fees at the Wasatch Mountain State Park, Palisades State  
5411 Park, or Jordan River State Park, as provided under Section 63-11-19.5;

5412 (vvv) revenue for golf user fees at the Green River State Park, as provided under  
5413 Section 63-11-19.6;

5414 (www) the Centennial Nonmotorized Paths and Trail Crossings Program created under  
5415 Section 63-11a-503;

5416 (xxx) the Bonneville Shoreline Trail Program created under Section 63-11a-504;

5417 (yyy) the account for the Utah Geological Survey, as provided in Section 63-73-10;

5418 (zzz) the Risk Management Fund created under Section 63A-4-201;

5419 (aaaa) the Child Welfare Parental Defense Fund created in Section 63A-11-203;

5420 (bbbb) the Constitutional Defense Restricted Account created in Section 63C-4-103;

5421 (cccc) a portion of the funds appropriated to the Utah Seismic Safety Commission, as

5422 provided in Section 63C-6-104;

5423 (dddd) funding for the Medical Education Program administered by the Medical  
5424 Education Council, as provided in Section 63C-8-102;

5425 (eeee) certain monies payable for commission expenses of the Pete Suazo Utah  
5426 Athletic Commission, as provided under Section 63C-11-301;

5427 (ffff) funds collected for publishing the Division of Administrative Rules' publications,  
5428 as provided in Section 63G-3-402;

5429 (gggg) the appropriation to fund the Governor's Office of Economic Development's  
5430 Enterprise Zone Act, as provided in Section 63M-1-416;

5431 (hhhh) the Tourism Marketing Performance Account, as provided in Section  
5432 63M-1-1406;

5433 (iiii) certain funding for rural development provided to the Office of Rural  
5434 Development in the Governor's Office of Economic Development, as provided in Section  
5435 63M-1-1604;

5436 (jjjj) certain monies in the Development for Disadvantaged Rural Communities  
5437 Restricted Account, as provided in Section 63M-1-2003;

5438 (kkkk) appropriations to the Utah Science Technology and Research Governing  
5439 Authority, created under Section 63M-2-301, as provided under Section 63M-3-302;

5440 (llll) certain monies in the Rural Broadband Service Fund, as provided in Section  
5441 63M-1-2303;

5442 (mmmm) funds collected from monthly offender supervision fees, as provided in  
5443 Section 64-13-21.2;

5444 (nnnn) funds collected by the housing of state probationary inmates or state parole  
5445 inmates, as provided in Subsection 64-13e-104(2);

5446 (oooo) the Sovereign Lands Management account created in Section 65A-5-1;

5447 (pppp) certain forestry and fire control funds utilized by the Division of Forestry, Fire,  
5448 and State Lands, as provided in Section 65A-8-103;

5449 (qqqq) the Department of Human Resource Management user training program, as  
5450 provided in Section 67-19-6;

5451 (rrrr) funds for the University of Utah Poison Control Center program, as provided in  
5452 Section 69-2-5.5;



5453           (ssss) appropriations to the Transportation Corridor Preservation Revolving Loan  
5454 Fund, as provided in Section 72-2-117;  
5455           (tttt) appropriations to the Local Transportation Corridor Preservation Fund, as  
5456 provided in Section 72-2-117.5;  
5457           (uuuu) appropriations to the Tollway Restricted Special Revenue Fund, as provided in  
5458 Section 77-2-120;  
5459           (vvvv) appropriations to the Aeronautics Construction Revolving Loan Fund, as  
5460 provided in Section 77-2-122;  
5461           (www) appropriations to the State Park Access Highways Improvement Program, as  
5462 provided in Section 72-3-207;  
5463           (xxxx) the Traffic Noise Abatement Program created in Section 72-6-112;  
5464           (yyyy) certain funds received by the Office of the State Engineer for well drilling fines  
5465 or bonds, as provided in Section 73-3-25;  
5466           (zzzz) certain monies appropriated to increase the carrying capacity of the Jordan River  
5467 that are transferred to the Division of Parks and Recreation, as provided in Section 73-10e-1;  
5468           (aaaaa) certain fees for the cost of electronic payments under the State Boating Act, as  
5469 provided in Section 73-18-25;  
5470           (bbbbb) certain monies appropriated from the Water Resources Conservation and  
5471 Development Fund, as provided in Section 73-23-2;  
5472           (ccccc) the Lake Powell Pipeline Project Operation and Maintenance Fund created in  
5473 Section 73-28-404;  
5474           (ddddd) certain funds in the Water Development and Flood Mitigation Reserve  
5475 Account, as provided in Section 73-103-1;  
5476           (eeeee) certain funds appropriated for compensation for special prosecutors, as  
5477 provided in Section 77-10a-19;  
5478           (fffff) the Indigent Aggravated Murder Defense Trust Fund created in Section  
5479 77-32-601;  
5480           (ggggg) the Indigent Felony Defense Trust Fund created in Section 77-32-701;  
5481           (hhhhh) funds donated or paid to a juvenile court by private sources, as provided in  
5482 Subsection 78A-6-203(1)(c);  
5483           (iiiii) a state rehabilitative employment program, as provided in Section 78A-6-210;

5484 and

5485 (jjjj) fees from the issuance and renewal of licenses for certified court interpreters, as  
5486 provided in Section 78B-1-146.

5487 (2) No revenue collection, appropriation from a fund or account, or appropriation to a  
5488 program may be treated as nonlapsing unless:

5489 (a) it is expressly referenced by this section;

5490 (b) it is designated in a condition of appropriation in the appropriations bill; or

5491 (c) nonlapsing authority is granted under Section 63J-1-603.

5492 (3) Each legislative appropriations subcommittee shall review the accounts and funds  
5493 that have been granted nonlapsing authority under this section or Section 63J-1-603.

5494 Section 112. Section **70D-3-102** is amended to read:

5495 **70D-3-102. Definitions.**

5496 As used in this chapter:

5497 (1) "Administrative or clerical tasks" means:

5498 (a) the receipt, collection, and distribution of information common for the process or  
5499 underwriting of a loan in the mortgage industry; and

5500 (b) a communication with a consumer to obtain information necessary for the  
5501 processing or underwriting of a residential mortgage loan.

5502 (2) "Affiliate" shall be defined by the commissioner by rule made in accordance with  
5503 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

5504 (3) "Applicant" means an individual applying for a license under this chapter.

5505 (4) "Approved examination provider" means a person approved by the nationwide  
5506 database as an approved test provider.

5507 (5) "Business as a loan originator" means for compensation or in the expectation of  
5508 compensation to engage in an act that makes an individual a loan originator.

5509 (6) "Clerical or support duties" includes after the receipt of an application for a  
5510 residential mortgage loan:

5511 (a) the receipt, collection, distribution, and analysis of information common for the  
5512 processing or underwriting of a residential mortgage loan; and

5513 (b) communicating with a consumer to obtain the information necessary for the  
5514 processing or underwriting of the residential mortgage loan, to the extent that the

5515 communication does not include:

5516 (i) offering or negotiating a residential mortgage loan rate or term; or

5517 (ii) counseling a consumer about a residential mortgage loan rate or term.

5518 (7) "Compensation" means anything of economic value that is paid, loaned, granted,

5519 given, donated, or transferred to an individual or entity for or in consideration of:

5520 (a) services;

5521 (b) personal or real property; or

5522 (c) another thing of value.

5523 (8) "Continuing education" means education taken by an individual licensed under this

5524 chapter in order to meet the education requirements imposed by Section 70D-3-303 to renew a

5525 license under this chapter.

5526 (9) "Covered subsidiary" means a subsidiary that is:

5527 (a) owned and controlled by a depository institution; and

5528 (b) regulated by a federal banking agency.

5529 (10) "Federal banking agency" means:

5530 (a) the Board of Governors of the Federal Reserve System;

5531 (b) the Comptroller of the Currency;

5532 (c) the Director of the Office of Thrift Supervision;

5533 (d) the National Credit Union Administration; or

5534 (e) the Federal Deposit Insurance Corporation.

5535 (11) "Licensee" means an individual licensed under this chapter.

5536 (12) (a) Except as provided in Subsection (12)(b), "loan originator" means an

5537 individual who for compensation or in the expectation of compensation:

5538 (i) takes a residential mortgage loan application; or

5539 (ii) offers or negotiates a term of a residential mortgage loan.

5540 (b) "Loan originator" does not include:

5541 (i) an individual who is engaged solely as a loan processor or underwriter;

5542 (ii) unless compensated by a lender, broker, other loan originator, or an agent of a

5543 lender, broker, or other loan originator, a person who:

5544 (A) only performs real estate brokerage activities; and

5545 (B) is licensed under Title 61, Chapter ~~[2, Division of Real Estate]~~ 2f, Real Estate

5546 Licensing and Practices Act;

5547 (iii) a person who is solely involved in extension of credit relating to a timeshare plan,  
5548 as defined in 11 U.S.C. Sec. 101(53D); or

5549 (iv) an attorney licensed to practice law in this state who, in the course of the attorney's  
5550 practice as an attorney, assists a person in obtaining a residential mortgage loan.

5551 (13) "Loan processor or underwriter" means an individual who as an employee  
5552 performs clerical or support duties:

5553 (a) at the direction of and subject to the supervision and instruction of:

5554 (i) a licensee; or

5555 (ii) a registered loan originator; and

5556 (b) as an employee of:

5557 (i) the licensee; or

5558 (ii) a registered loan originator.

5559 (14) "Nationwide database" means the Nationwide Mortgage Licensing System and  
5560 Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.  
5561 Sec. 5101, et seq.

5562 (15) "Nontraditional mortgage product" means a mortgage product other than a 30-year  
5563 fixed rate mortgage.

5564 (16) "Owned and controlled by a depository institution" may be defined by rule made  
5565 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative  
5566 Rulemaking Act.

5567 (17) "Prelicensing education" means education taken by an individual seeking to be  
5568 licensed under this chapter in order to meet the education requirements imposed by Section  
5569 70D-3-301 for an individual to obtain a license under this chapter.

5570 (18) "Registered loan originator" means an individual who:

5571 (a) engages in an act as a loan originator only as an employee of:

5572 (i) a depository institution;

5573 (ii) a covered subsidiary; or

5574 (iii) an institution regulated by the Farm Credit Administration; and

5575 (b) is registered with, and maintains a unique identifier through, the nationwide  
5576 database.

5577 (19) (a) Subject to Subsection (19)(b), "residential mortgage loan" means:  
5578 (i) a mortgage loan; or  
5579 (ii) a loan that is:  
5580 (A) secured by a mortgage; and  
5581 (B) subject to Title 70C, Utah Consumer Credit Code.

5582 (b) A loan described in Subsection (19)(a) is a "residential mortgage loan" only if the  
5583 mortgage securing the loan is on:

5584 (i) a dwelling located in the state; or  
5585 (ii) real property located in the state, upon which is constructed or intended to be  
5586 constructed a dwelling.

5587 (20) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

5588 Section 113. Section **72-5-116** is amended to read:

5589 **72-5-116. Exemption from state licensure.**

5590 In accordance with Section [~~61-2-3~~] 61-2f-202, an employee or authorized agent  
5591 working under the oversight of the department when engaging in an act on behalf of the  
5592 department related to one or more of the following is exempt from licensure under Title 61,  
5593 Chapter [~~2, Division of Real Estate~~] 2f, Real Estate Licensing and Practices Act:

5594 (1) acquiring real [~~property~~] estate pursuant to Section 72-5-103;  
5595 (2) disposing of real [~~property~~] estate pursuant to Section 72-5-111;  
5596 (3) providing services that constitute property management, as defined in Section  
5597 [~~61-2-2~~] 61-2f-102; or  
5598 (4) leasing of real [~~property~~] estate.

5599 Section 114. **Repealer.**

5600 This bill repeals:

5601 Section **61-2-4, One act for compensation qualifies person as broker or sales agent.**

5602 Section **61-2b-11, Curriculum to be determined by board.**

5603 Section **61-2b-16, Certification and licensing examinations.**

5604 Section **61-2c-207, Reciprocal licensure.**

5605 Section **61-2c-208, Activation and inactivation of license.**

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**Legislative Review Note**  
as of 1-26-10 11:31 AM

**Office of Legislative Research and General Counsel**

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**H.B. 275 - Division of Real Estate Amendments**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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