

DIVISION OF REAL ESTATE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of Title 61, Securities Division - Real Estate Division.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes certain filing fees;
- ▶ amends costs related to an on-site inspection regarding an application for registration of subdivided lands;
- ▶ amends the renewal fee for the registration of subdivided lands;
- ▶ makes a person subject to an occupational or professional regulation of Title 61, Securities Division - Real Estate Division strictly liable for each violation under the title;
- ▶ amends provisions related to prelicensing education and continuing education for a person transacting the business of residential mortgage loans;
- ▶ amends provisions related to a criminal background check for an individual applying for a license to transact the business of residential mortgage loans;
- ▶ amends provisions regarding prohibited conduct for an individual licensed under Title 61:
 - Chapter 2c, Utah Residential Mortgage Practices and Licensing;
 - Chapter 2f, Real Estate Licensing and Practices Act; or



- 28 • Chapter 2g, Real Estate Appraiser Licensing and Certification Act;
- 29 ▶ amends provisions regarding the removal of an appraiser from an appraiser
- 30 management company's appraiser panel;
- 31 ▶ amends provisions regarding the issuance and display of a license issued under the
- 32 Real Estate Licensing and Practices Act;
- 33 ▶ amends the amount of time following certain violations in which the Division of
- 34 Real Estate may commence a disciplinary action;
- 35 ▶ amends provision related to an appraiser trainee signing an appraisal report; and
- 36 ▶ makes technical and conforming changes.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

- 43 57-11-4, as last amended by Laws of Utah 2013, Chapter 292
- 44 57-11-6, as last amended by Laws of Utah 1990, Chapter 199
- 45 57-11-10, as last amended by Laws of Utah 2008, Chapter 382
- 46 61-2-203, as last amended by Laws of Utah 2019, Chapter 337
- 47 61-2c-102, as last amended by Laws of Utah 2018, Chapter 55
- 48 61-2c-202, as last amended by Laws of Utah 2015, Chapter 262
- 49 61-2c-204.1, as last amended by Laws of Utah 2017, Chapter 182
- 50 61-2c-301, as last amended by Laws of Utah 2017, Chapter 182
- 51 61-2e-306, as last amended by Laws of Utah 2016, Chapter 384
- 52 61-2f-205, as last amended by Laws of Utah 2014, Chapter 350
- 53 61-2f-401, as last amended by Laws of Utah 2019, Chapters 337 and 475
- 54 61-2f-402, as last amended by Laws of Utah 2017, Chapter 182
- 55 61-2g-401, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 56 61-2g-405, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 57 61-2g-502, as last amended by Laws of Utah 2016, Chapter 384

58

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

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

61 **57-11-4. Exemptions.**

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

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

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

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

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

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

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

80 (d) pursuant to court order;

81 (e) by a government or government agency;

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

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

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

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

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

- 90 (g) in an industrial park;
- 91 (h) as cemetery lots; or
- 92 (i) if the interest is offered as part of a camp resort as defined in Section 57-19-2 or a
93 timeshare development as defined in Section 57-19-2.
- 94 (2) Unless the method of disposition is adopted for the purpose of evasion of this
95 chapter or the provisions of the federal act, this chapter, except as specifically designated, does
96 not apply to an offer or disposition of:
 - 97 (a) indebtedness secured by a mortgage or deed of trust on real estate;
 - 98 (b) a security or unit of interest issued by a real estate investment trust regulated under
99 any state or federal statute;
 - 100 (c) subject to Subsection (5), subdivided lands registered under the federal act and
101 which the division finds to be in the public interest to exempt from the registration
102 requirements of this chapter;
 - 103 (d) a security currently registered with the Division of Securities; or
 - 104 (e) an interest in oil, gas, or other minerals or a royalty interest in these assets if the
105 offer or disposition of the interest is regulated as a security by the federal government or by the
106 Division of Securities.
- 107 (3) (a) Notwithstanding the exemptions in Subsections (1) and (2), a person making an
108 offer or disposition of an interest in land that is located in Utah shall apply to the division for
109 an exemption before the offer or disposition is made if:
 - 110 (i) the person is representing, in connection with the offer or disposition, the
111 availability of culinary water service to or on the subdivided land; and
 - 112 (ii) the culinary water service is provided by a water corporation as defined in Section
113 54-2-1.
- 114 (b) A subdivider seeking to qualify under ~~[this]~~ the exemption described in Subsection
115 (3)(a) shall file with the division a filing fee of ~~[\$50]~~ \$100 and an application containing:
 - 116 (i) information ~~[required by]~~ the division requires to show that the offer or disposition
117 is exempt under this section;
 - 118 (ii) a statement as to what entity will ~~[be providing]~~ provide culinary water service and
119 the nature of that entity; and
 - 120 (iii) (A) a copy of the entity's certificate of convenience and necessity issued by the

121 Public Service Commission; or

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

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

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

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

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

134 (ii) a filing fee of \$100.

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

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

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

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

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

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

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

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

146 **57-11-6. Application for registration -- Required documents and information --**
147 **Filing fee and deposit -- Consolidation of registration of additional lands -- Reports of**
148 **changes.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

182 (B) an opinion of an attorney, licensed to practice in this state and who is not a salaried

183 employee, officer, or director of the applicant or owner;

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

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

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

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

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

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

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

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

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

205 ~~[(l)]~~ (n) (i) if the subdivided lands are situated in this state, and unless all lands to be
206 disposed of are included on a subdivision plat map ~~[which has been]~~ that is filed and approved
207 ~~[pursuant to]~~ in accordance with Title 17, Counties, an opinion by an attorney, licensed to
208 practice in this state and who is not a salaried employee, officer, or director of the applicant or
209 owner, stating that:

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

212 (B) all permits or approvals have been obtained from the applicable state or local
213 authorities necessary for the subdivided lands to be put to the use for which they are offered,

214 except for those permits or approvals [~~which~~] that will not be granted until the subdivided
215 lands are registered under this chapter if this registration is the only condition precedent to the
216 granting of the permits or approvals; or

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

221 [~~m~~] (o) a statement of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 **57-11-10. Renewal report -- Renewal fee -- Examination by division -- Annual**
 274 **reports.**

275 (1) (a) Within 30 days after each annual anniversary date of the division's registration

276 of subdivided lands, the subdivider shall file a renewal report in the form [~~prescribed by the~~
277 ~~division~~] the division prescribes together with a renewal fee of [~~\$200~~] \$50.

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

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

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

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

289 (c) If the subdivider does not meet the requirements [~~are not met~~] within the time
290 allowed, the division may, notwithstanding the provisions of Section 57-11-13 and without
291 further notice, issue a cease and desist order according to the emergency procedures of Title
292 63G, Chapter 4, Administrative Procedures Act, barring further sale of the subdivided lands.

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

296 Section 4. Section **61-2-203** is amended to read:

297 **61-2-203. Adjudicative proceedings -- Citation authority.**

298 (1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures
299 Act, in an adjudicative proceeding under a chapter the division administers.

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

301 (a) a notice of agency action; or

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

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

307 ~~[(3)]~~ (4) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not
308 apply to the issuance of a citation under Subsection ~~[(4)]~~ (5), unless a licensee or another
309 person authorized by law to contest the validity or correctness of a citation commences an
310 adjudicative proceeding contesting the citation.

311 ~~[(4)]~~ (5) In addition to any other statutory penalty for a violation related to an
312 occupation or profession regulated under this title, the division may issue a citation to a person
313 who, upon inspection or investigation, the division concludes to have violated:

- 314 (a) Subsection 61-2c-201(1), which requires licensure;
- 315 (b) Subsection 61-2c-201(4), which requires entity licensure;
- 316 (c) Subsection 61-2c-205(3), which requires notification of a change in specified
317 information regarding a licensee;
- 318 (d) Subsection 61-2c-205(4), which requires notification of a specified legal action;
- 319 (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division
320 within the required time period;
- 321 (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the
322 division;
- 323 (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
- 324 (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading
325 advertising;
- 326 (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed
327 work if unlicensed;
- 328 (j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a
329 quarterly report of condition;
- 330 (k) Subsection 61-2e-201(1), which requires registration;
- 331 (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;
- 332 (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;
- 333 (n) Subsection 61-2e-401(1)(c), which prohibits failure to respond to a division
334 request;
- 335 (o) Subsection 61-2f-201(1), which requires licensure;
- 336 (p) Subsection 61-2f-206(1), which requires entity registration;
- 337 (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;

- 338 (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;
- 339 (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated
- 340 with a principal broker;
- 341 (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records and
- 342 prohibits failing to make the specified records available for division inspection;
- 343 (u) Subsection 61-2f-401~~(13)~~(12), which prohibits false, misleading, or deceptive
- 344 advertising;
- 345 (v) Subsection 61-2f-401~~(20)~~(18), which prohibits failing to respond to a division
- 346 request;
- 347 (w) Subsection 61-2g-301(1), which requires licensure;
- 348 (x) Subsection 61-2g-405(3), which requires making records required to be maintained
- 349 available to the division;
- 350 (y) Subsection 61-2g-501(2)(c), which requires a person to respond to a division
- 351 request in an investigation within 10 days after the day on which the request is served;
- 352 (z) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;
- 353 (aa) a rule made pursuant to any Subsection listed in this Subsection ~~(4)~~ (5);
- 354 (bb) an order of the division; or
- 355 (cc) an order of the commission or board that oversees the person's profession.
- 356 ~~(5)~~ (6) (a) In accordance with Subsection ~~(10)~~ (11), the division may assess a fine
- 357 against a person for a violation of a provision listed in Subsection ~~(4)~~ (5), as evidenced by:
- 358 (i) an uncontested citation;
- 359 (ii) a stipulated settlement; or
- 360 (iii) a finding of a violation in an adjudicative proceeding.
- 361 (b) The division may, in addition to or in lieu of a fine under Subsection ~~(5)~~ (6)(a),
- 362 order the person to cease and desist from an activity that violates a provision listed in
- 363 Subsection ~~(4)~~ (5).
- 364 ~~(6)~~ (7) Except as provided in Subsection ~~(8)~~ (9)(d), the division may not use a
- 365 citation to effect a license:
- 366 (a) denial;
- 367 (b) probation;
- 368 (c) suspension; or

369 (d) revocation.

370 [~~7~~] (8) (a) A citation issued by the division shall:

371 (i) be in writing;

372 (ii) describe with particularity the nature of the violation, including a reference to the

373 provision of the statute, rule, or order alleged to have been violated;

374 (iii) clearly state that the recipient must notify the division in writing within 20

375 calendar days after the day on which the citation is served if the recipient wishes to contest the

376 citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

377 (iv) clearly explain the consequences of failure to timely contest the citation or to make

378 payment of a fine assessed by the citation within the time period specified in the citation.

379 (b) The division may issue a notice in lieu of a citation.

380 [~~8~~] (9) (a) A citation becomes final:

381 (i) if within 20 calendar days after the day on which the citation is served, the person to

382 whom the citation was issued fails to request a hearing to contest the citation; or

383 (ii) if the director or the director's designee conducts a hearing pursuant to a timely

384 request for a hearing and issues an order finding that a violation has occurred.

385 (b) The division may extend, for cause, the 20-day period described in Subsection

386 (9)(a) to contest a citation.

387 (c) A citation that becomes the final order of the division due to a person's failure to

388 timely request a hearing is not subject to further agency review.

389 (d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on

390 probation the license of a licensee who fails to comply with a citation after the citation

391 becomes final.

392 (ii) The failure of a license applicant to comply with a citation after the citation

393 becomes final is a ground for denial of the license application.

394 [~~9~~] (10) (a) The division may not issue a citation under this section after the

395 expiration of one year after the day on which the violation occurs.

396 (b) The division may issue a notice to address a violation that is outside of the one-year

397 citation period.

398 [~~10~~] (11) The director or the director's designee shall assess a fine with a citation in

399 an amount that is no more than:

- 400 (a) for a first offense, \$1,000;
- 401 (b) for a second offense, \$2,000; and
- 402 (c) for each offense subsequent to a second offense, \$2,000 for each day of continued
- 403 offense.

404 ~~[(11)]~~ (12) (a) An action for a first or second offense for which the division has not
405 issued a final order does not preclude the division from initiating a subsequent action for a
406 second or subsequent offense while the preceding action is pending.

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

410 ~~[(12)]~~ (13) (a) If a person does not pay a penalty, the director may collect the unpaid
411 penalty by:

- 412 (i) referring the matter to a collection agency; or
- 413 (ii) bringing an action in the district court of the county:
 - 414 (A) where the person resides; or
 - 415 (B) where the office of the director is located.

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

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

420 Section 5. Section **61-2c-102** is amended to read:

421 **61-2c-102. Definitions.**

422 (1) As used in this chapter:

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

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

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

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

- 429 (i) qualifies under this chapter as a principal lending manager; and
- 430 (ii) works by or on behalf of another principal lending manager in transacting the

431 business of residential mortgage loans.

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

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

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

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

437 (i) licensed as a lending manager; and

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

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

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

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

445 (iii) that operates under:

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

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

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

449 (i) a Saturday;

450 (ii) a Sunday; or

451 (iii) a federal or state holiday.

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

454 (A) engage in an act that makes an individual a mortgage loan originator;

455 (B) make or originate a residential mortgage loan;

456 (C) directly or indirectly solicit a residential mortgage loan for another;

457 (D) unless exempt under Section [61-2c-105](#) or excluded under Subsection (1)(i)(ii),

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

459 (I) preparing a loan package;

460 (II) communicating with the borrower or lender;

461 (III) advising on a loan term;

462 (IV) receiving, collecting, or distributing information common for the processing or
463 underwriting of a loan in the mortgage industry; or

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

466 (E) engage in loan modification assistance.

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

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

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

471 (I) a loan wholesaler;

472 (II) an account executive for a loan wholesaler;

473 (III) a loan closer; or

474 (IV) funding a loan; or

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

477 (j) "Certified education provider" means a person who is certified under Section
478 [61-2c-204.1](#) to provide ~~[one or more of the following: (i)]~~ Utah-specific prelicensing
479 education~~[-or]~~.

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

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

482 (i) with a fixed amount borrowed; and

483 (ii) that does not permit additional borrowing secured by the same collateral.

484 (l) "Commission" means the Residential Mortgage Regulatory Commission created in
485 Section [61-2c-104](#).

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

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

490 (i) services;

491 (ii) personal or real property; or

492 (iii) another thing of value.

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

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

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

500 (i) direct or exercise a controlling interest over:

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

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

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

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

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

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

510 (A) a manager;

511 (B) a managing partner;

512 (C) a director;

513 (D) an executive officer; or

514 (E) an individual who performs a function similar to an individual listed in this

515 Subsection (1)(r)(ii).

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

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

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

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

521 (i) a condominium unit;

522 (ii) a cooperative unit;

523 (iii) a manufactured home; or

- 524 (iv) a house.
- 525 (w) "Employee":
- 526 (i) means an individual:
- 527 (A) whose manner and means of work performance are subject to the right of control
- 528 of, or are controlled by, another person; and
- 529 (B) whose compensation for federal income tax purposes is reported, or is required to
- 530 be reported, on a W-2 form issued by the controlling person; and
- 531 (ii) does not include an independent contractor who performs duties other than at the
- 532 direction of, and subject to the supervision and instruction of, another person.
- 533 (x) "Entity" means:
- 534 (i) a corporation;
- 535 (ii) a limited liability company;
- 536 (iii) a partnership;
- 537 (iv) a company;
- 538 (v) an association;
- 539 (vi) a joint venture;
- 540 (vii) a business trust;
- 541 (viii) a trust; or
- 542 (ix) another organization.
- 543 (y) "Executive director" means the executive director of the Department of Commerce.
- 544 (z) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage
- 545 Licensing, 12 U.S.C. Sec. 5101 et seq.
- 546 (aa) "Foreclosure rescue" means, for compensation or with the expectation of receiving
- 547 valuable consideration, to:
- 548 (i) engage, or offer to engage, in an act that:
- 549 (A) the person represents will assist a borrower in preventing a foreclosure; and
- 550 (B) relates to a transaction involving the transfer of title to residential real property; or
- 551 (ii) as an employee or agent of another person:
- 552 (A) solicit, or offer that the other person will engage in an act described in Subsection
- 553 (1)(aa)(i); or
- 554 (B) negotiate terms in relationship to an act described in Subsection (1)(aa)(i).

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

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

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

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

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

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

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

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

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

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

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

572 (V) an addition of collateral;

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

574 (VII) an addition of a cosigner; or

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

576 (B) substitute a new residential mortgage loan for an existing residential mortgage
577 loan; or

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

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

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

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

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

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

- 586 (Aa) a purchase;
- 587 (Bb) a refinance;
- 588 (Cc) a loan modification assistance; or
- 589 (Dd) a foreclosure rescue; or
- 590 (III) directly or indirectly solicits a residential mortgage loan for another person; and
- 591 (B) is licensed as a mortgage loan originator in accordance with this chapter.
- 592 (ii) "Mortgage loan originator" does not include a person who:
- 593 (A) is described in Subsection (1)(gg)(i), but who performs exclusively administrative
- 594 or clerical tasks as described in Subsection (1)(i)(ii)(A);
- 595 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
- 596 (II) performs only real estate brokerage activities; and
- 597 (III) receives no compensation from:
- 598 (Aa) a lender;
- 599 (Bb) a lending manager; or
- 600 (Cc) an agent of a lender or lending manager; or
- 601 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
- 602 11 U.S.C. Sec. 101(53D).
- 603 (hh) "Nationwide database" means the Nationwide Mortgage Licensing System and
- 604 Registry, authorized under federal licensing requirements.
- 605 (ii) "Nontraditional mortgage product" means a mortgage product other than a 30-year
- 606 fixed rate mortgage.
- 607 (jj) "Person" means an individual or entity.
- 608 (kk) "Prelicensing education" means education taken by an individual seeking to be
- 609 licensed under this chapter in order to meet the education requirements imposed by Section
- 610 [61-2c-204.1](#) or [61-2c-206](#) for an individual to obtain a license under this chapter.
- 611 (ll) "Principal lending manager" means an individual:
- 612 (i) licensed as a lending manager under Section [61-2c-206](#); and
- 613 (ii) identified in the nationwide database by the individual's sponsoring entity as the
- 614 entity's principal lending manager.
- 615 (mm) "Prospective borrower" means a person applying for a mortgage from a person
- 616 who is required to be licensed under this chapter.

- 617 (nn) "Record" means information that is:
- 618 (i) prepared, owned, received, or retained by a person; and
- 619 (ii) (A) inscribed on a tangible medium; or
- 620 (B) (I) stored in an electronic or other medium; and
- 621 (II) in a perceivable and reproducible form.
- 622 (oo) "Referral fee":
- 623 (i) means any fee, kickback, other compensation, or thing of value tendered for a
- 624 referral of business or a service incident to or part of a residential mortgage loan transaction;
- 625 and
- 626 (ii) does not include:
- 627 (A) a payment made by a licensed entity to an individual employed by the entity under
- 628 a contractual incentive program according to rules made by the division in accordance with
- 629 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
- 630 (B) a payment made for reasonable promotional and educational activities that is not
- 631 conditioned on the referral of business and is not used to pay expenses that a person in a
- 632 position to refer settlement services or business related to the settlement services would
- 633 otherwise incur.
- 634 (pp) "Residential mortgage loan" means an extension of credit, if:
- 635 (i) the loan or extension of credit is secured by a:
- 636 (A) mortgage;
- 637 (B) deed of trust; or
- 638 (C) consensual security interest; and
- 639 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
- 640 (1)(pp)(i):
- 641 (A) is on a dwelling located in the state; and
- 642 (B) is created with the consent of the owner of the residential real property.
- 643 (qq) "Settlement" means the time at which each of the following is complete:
- 644 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the
- 645 escrow or closing office each document required by:
- 646 (A) the real estate purchase contract;
- 647 (B) the lender;

648 (C) the title insurance company;

649 (D) the escrow or closing office;

650 (E) the written escrow instructions; or

651 (F) applicable law;

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

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

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

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

664 (tt) "State" means:

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

666 (ii) the District of Columbia; or

667 (iii) the Commonwealth of Puerto Rico.

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

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

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

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

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

678 Section 6. Section **61-2c-202** is amended to read:

679 **61-2c-202. Licensure procedures.**

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

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

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

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

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

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

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

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

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

693 (ii) a notarized letter to the division that:

694 (A) is on the entity's letterhead;

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

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

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

699 (b) if the applicant is an individual:

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

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

707 (iii) submit evidence using a method approved by the division by rule of having
708 successfully completed approved prelicensing education in accordance with Section

709 [61-2c-204.1](#);

- 710 (iv) submit evidence using a method approved by the division by rule of having
711 successfully passed any required licensing examination in accordance with Section
712 [61-2c-204.1](#);
- 713 (v) submit evidence using a method approved by the division by rule of having
714 successfully registered in the nationwide database, including paying a fee required by the
715 nationwide database; and
- 716 (vi) authorize the division to obtain independent credit reports:
- 717 (A) through a consumer reporting agency described in Section 603(p) of the Fair Credit
718 Reporting Act, 15 U.S.C. Sec. 1681a; and
- 719 (B) at times provided by rule that the division makes in accordance with Title 63G,
720 Chapter 3, Utah Administrative Rulemaking Act; and
- 721 (c) pay to the division:
- 722 (i) an application fee established by the division in accordance with Section [63J-1-504](#);
723 and
- 724 (ii) the reasonable expenses incurred by the division in processing the application for
725 licensure.
- 726 (2) (a) Upon receiving an application, the division, with the concurrence of the
727 commission, shall determine whether the applicant:
- 728 (i) meets the qualifications for licensure; and
729 (ii) complies with this section.
- 730 (b) If the division, with the concurrence of the commission, determines that an
731 applicant meets the qualifications for licensure and complies with this section, the division
732 shall issue the applicant a license.
- 733 (c) If the division, with the concurrence of the commission, determines that the
734 division requires more information to make a determination under Subsection (2)(a), the
735 division may:
- 736 (i) hold the application pending further information about an applicant's criminal
737 background or history related to adverse administrative action in any jurisdiction; or
738 (ii) issue a conditional license:
- 739 (A) pending the completion of a criminal background check; and
740 (B) subject to probation, suspension, or revocation if the criminal background check

741 reveals that the applicant did not truthfully or accurately disclose on the licensing application a
742 criminal history or other history related to adverse administrative action.

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

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

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

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

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

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

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

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

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

760 **61-2c-204.1. Education providers -- Education requirements -- Examination**
761 **requirements.**

762 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

782 or

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

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

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

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

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

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

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

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

794 (A) in the number of hours required by rule made by the division in accordance with
795 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

796 (B) that includes the continuing education required by federal licensing regulations; or

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

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

802 (i) except as provided in Subsection 61-2c-206(1)(b), the appropriate number of hours

803 of prelicensing education required to obtain a license;

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

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

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

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

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

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

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

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

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

825 (i) fundamentals of the English language;

826 (ii) arithmetic;

827 (iii) provisions of this chapter;

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

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

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

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

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

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

842 (ii) upon a finding of reasonable cause.

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

847 Section 8. Section **61-2c-301** is amended to read:

848 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

851 (a) give or receive a referral fee;

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

853 (i) that is excessive; or

854 (ii) without providing to the loan applicant a written statement signed by the loan
855 applicant:

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

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

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

861 (i) safeguard the interests of the public; or

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

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

- 865 (i) make a false statement or representation;
- 866 (ii) cause false documents to be generated; or
- 867 (iii) knowingly permit false information to be submitted by any party;
- 868 (e) give or receive compensation or anything of value, or withhold or threaten to
- 869 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
- 870 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
- 871 violation of this section for a licensee to withhold payment because of a bona fide dispute
- 872 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
- 873 of Professional Appraisal Practice;
- 874 (f) violate or not comply with:
- 875 (i) this chapter;
- 876 (ii) an order of the commission or division; or
- 877 (iii) a rule made by the division;
- 878 (g) fail to respond within the required time period to:
- 879 (i) a notice or complaint of the division; or
- 880 (ii) a request for information from the division;
- 881 (h) make false representations to the division, including in a licensure statement;
- 882 (i) [~~for a residential mortgage loan transaction beginning on or after January 1, 2004,]~~
- 883 engage in the business of residential mortgage loans with respect to the transaction if the
- 884 person also acts in any of the following capacities with respect to the same residential mortgage
- 885 loan transaction:
- 886 (i) appraiser;
- 887 (ii) escrow agent;
- 888 (iii) real estate agent;
- 889 (iv) general contractor; or
- 890 (v) title insurance producer;
- 891 (j) engage in unprofessional conduct as defined by rule;
- 892 (k) engage in an act or omission in transacting the business of residential mortgage
- 893 loans that constitutes dishonesty, fraud, or misrepresentation;
- 894 (l) engage in false or misleading advertising;
- 895 (m) (i) fail to account for money received in connection with a residential mortgage

896 loan;

897 (ii) use money for a different purpose from the purpose for which the money is
898 received; or

899 (iii) except as provided in Subsection (4), retain money paid for services if the services
900 are not performed;

901 (n) fail to provide a prospective borrower a copy of each appraisal and any other
902 written valuation developed in connection with an application for credit that is to be secured by
903 a first lien on a dwelling in accordance with Subsection (5);

904 (o) engage in an act that is performed to:

905 (i) evade this chapter; or

906 (ii) assist another person to evade this chapter;

907 (p) recommend or encourage default, delinquency, or continuation of an existing
908 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
909 of a residential mortgage loan that will refinance all or part of the indebtedness;

910 (q) in the case of the lending manager of an entity or a branch office of an entity, fail to
911 exercise reasonable supervision over the activities of:

912 (i) unlicensed staff; or

913 (ii) a mortgage loan originator who is affiliated with the lending manager;

914 (r) pay or offer to pay an individual who does not hold a license under this chapter for
915 work that requires the individual to hold a license under this chapter;

916 (s) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):

917 (i) provide a title insurance product or service without the approval required by Section
918 [31A-2-405](#); or

919 (ii) knowingly provide false or misleading information in the statement required by
920 Subsection [31A-2-405\(2\)](#);

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

924 (i) advertising;

925 (ii) a business card;

926 (iii) stationery;

- 927 (iv) a brochure;
- 928 (v) a sign;
- 929 (vi) a rate list; or
- 930 (vii) other promotional item;
- 931 (u) (i) engage in an act of loan modification assistance without being licensed under
932 this chapter;
- 933 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
934 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under
935 that chapter;
- 936 (iii) engage in an act of loan modification assistance without entering into a written
937 agreement specifying which one or more acts of loan modification assistance will be
938 completed;
- 939 (iv) request or require a person to pay a fee before obtaining:
- 940 (A) a written offer for a loan modification from the person's lender or servicer; and
941 (B) the person's written acceptance of the offer from the lender or servicer;
- 942 (v) induce a person seeking a loan modification to hire the licensee to engage in an act
943 of loan modification assistance by:
- 944 (A) suggesting to the person that the licensee has a special relationship with the
945 person's lender or loan servicer; or
- 946 (B) falsely representing or advertising that the licensee is acting on behalf of:
- 947 (I) a government agency;
- 948 (II) the person's lender or loan servicer; or
- 949 (III) a nonprofit or charitable institution;
- 950 (vi) recommend or participate in a loan modification that requires a person to:
- 951 (A) transfer title to real property to the licensee or to a third-party with whom the
952 licensee has a business relationship or financial interest;
- 953 (B) make a mortgage payment to a person other than the person's loan servicer; or
- 954 (C) refrain from contacting the person's:
- 955 (I) lender;
- 956 (II) loan servicer;
- 957 (III) attorney;

- 958 (IV) credit counselor; or
- 959 (V) housing counselor; or
- 960 (vii) for an agreement for loan modification assistance entered into on or after May 11,
- 961 2010, engage in an act of loan modification assistance without offering in writing to the person
- 962 entering into the agreement for loan modification assistance a right to cancel the agreement
- 963 within three business days after the day on which the person enters the agreement;
- 964 (v) sign or initial a document on behalf of another person, except for in a circumstance
- 965 allowed by the division by rule, with the concurrence of the commission, made in accordance
- 966 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 967 (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse
- 968 Mortgage Act; or
- 969 (x) engage in any act or practice that violates appraisal independence as defined in 15
- 970 U.S.C. Sec. 1639e or in the policies and procedures of:
- 971 (i) the Federal Home Loan Mortgage Corporation; or
- 972 (ii) the Federal National Mortgage Association.

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

- 976 ~~[(a) be convicted;]~~
- 977 ~~[(b) plead guilty or nolo contendere;]~~
- 978 ~~[(c) enter a plea in abeyance; or]~~
- 979 ~~[(d) be subjected to a criminal disposition similar to the ones described in Subsections~~
 980 ~~(2)(a) through (c).]~~

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

- 984 (a) be convicted of:
- 985 (i) a felony; or
- 986 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 987 (A) a class A misdemeanor;
- 988 (B) a class B misdemeanor; or

- 989 (C) a criminal offense comparable to a class A or class B misdemeanor;
990 (b) plead guilty or nolo contendere to:
991 (i) a felony; or
992 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
993 (A) a class A misdemeanor;
994 (B) a class B misdemeanor; or
995 (C) a criminal offense comparable to a class A or class B misdemeanor; or
996 (c) enter into a plea in abeyance agreement in relation to:
997 (i) a felony; or
998 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
999 (A) a class A misdemeanor;
1000 (B) a class B misdemeanor; or
1001 (C) a criminal offense comparable to a class A or class B misdemeanor.
1002 (3) A lending manager does not violate Subsection (1)(q) if:
1003 (a) in contravention of the lending manager's written policies and instructions, an
1004 affiliated licensee of the lending manager violates:
1005 (i) this chapter; or
1006 (ii) rules made by the division under this chapter;
1007 (b) the lending manager established and followed reasonable procedures to ensure that
1008 affiliated licensees receive adequate supervision;
1009 (c) upon learning of a violation by an affiliated licensee, the lending manager
1010 attempted to prevent or mitigate the damage;
1011 (d) the lending manager did not participate in or ratify the violation by an affiliated
1012 licensee; and
1013 (e) the lending manager did not attempt to avoid learning of the violation.
1014 (4) Notwithstanding Subsection (1)(m)(iii), a licensee may, upon compliance with
1015 Section [70D-2-305](#), charge a reasonable cancellation fee for work done originating a mortgage
1016 if the mortgage is not closed.
1017 (5) (a) Except as provided in Subsection (5)(b), a person transacting the business of
1018 residential mortgage loans in this state shall provide a prospective borrower a copy of each
1019 appraisal and any other written valuation developed in connection with an application for credit

1020 that is to be secured by a first lien on a dwelling on or before the earlier of:

1021 (i) as soon as reasonably possible after the appraisal or other valuation is complete; or

1022 (ii) three business days before the day of the settlement.

1023 (b) Subject to Subsection (5)(c), unless otherwise prohibited by law, a prospective
1024 borrower may waive the timing requirement described in Subsection (5)(a) and agree to receive
1025 each appraisal and any other written valuation:

1026 (i) less than three business days before the day of the settlement; or

1027 (ii) at the settlement.

1028 (c) (i) Except as provided in Subsection (5)(c)(ii), a prospective borrower shall submit
1029 a waiver described in Subsection (5)(b) at least three business days before the day of the
1030 settlement.

1031 (ii) Subsection (5)(b) does not apply if the waiver only pertains to a copy of an
1032 appraisal or other written valuation that contains only clerical changes from a previous version
1033 of the appraisal or other written valuation and the prospective borrower received a copy of the
1034 original appraisal or other written valuation at least three business days before the day of the
1035 settlement.

1036 (d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the
1037 transaction never completes, the person transacting the business of residential mortgage loans
1038 shall provide a copy of each appraisal or any other written valuation to the applicant no later
1039 than 30 days after the day on which the person knows the transaction will not complete.

1040 Section 9. Section **61-2e-306** is amended to read:

1041 **61-2e-306. Removal of appraiser from appraisal panel.**

1042 (1) [~~Except within the first 30 days after the day on which an appraiser is first added to~~
1043 ~~the appraiser panel of an appraisal management company, an] An appraisal management
1044 company may not remove the appraiser from [its] the appraisal management company's
1045 appraiser panel, or otherwise refuse to assign a request for a real estate appraisal activity to the
1046 appraiser without:~~

1047 (a) notifying the appraiser in writing of:

1048 (i) the reason why the appraiser is being removed from the appraiser panel of the
1049 appraisal management company; and

1050 (ii) the nature of the alleged conduct or violation if the appraiser is being removed from

1051 the appraiser panel for:

1052 (A) illegal conduct; or

1053 (B) a violation of the applicable appraisal standards; and

1054 (b) providing an opportunity for the appraiser to respond to the notification under

1055 Subsection (1)(a).

1056 (2) The board, with the concurrence of the division, may establish by rule made in
1057 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements
1058 consistent with this section regarding the removal of an appraiser from an appraisal panel.

1059 Section 10. Section **61-2f-205** is amended to read:

1060 **61-2f-205. Form of license -- Display of license.**

1061 [(+)] The division shall issue to a licensee a [wall] license that contains:

1062 [(a)] (1) the name and address of the licensee;

1063 [(b)] (2) the seal of the state; and

1064 [(c)] (3) any other matter prescribed by the division.

1065 [~~(2) The division shall send, by mail or email, the license described in Subsection (1) to~~
1066 ~~the licensee at the mailing address or email address furnished by the licensee.]~~

1067 [~~(3) A principal broker shall keep the license of the principal broker and the license of~~
1068 ~~any associate broker or sales agent affiliated with the principal broker in the office in which the~~
1069 ~~licensee works to be made available on request.]~~

1070 Section 11. Section **61-2f-401** is amended to read:

1071 **61-2f-401. Grounds for disciplinary action.**

1072 The following acts are unlawful and grounds for disciplinary action for a person
1073 licensed or required to be licensed under this chapter:

1074 (1) (a) making a substantial misrepresentation, including in a licensure statement;

1075 (b) making an intentional misrepresentation;

1076 (c) pursuing a continued and flagrant course of misrepresentation;

1077 (d) making a false representation or promise through an agent, sales agent, advertising,
1078 or otherwise; or

1079 (e) making a false representation or promise of a character likely to influence,
1080 persuade, or induce;

1081 (2) acting for more than one party in a transaction without the informed consent of the

- 1082 parties;
- 1083 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
1084 broker;
- 1085 (b) representing or attempting to represent a principal broker other than the principal
1086 broker with whom the person is affiliated; or
- 1087 (c) representing as sales agent or having a contractual relationship similar to that of
1088 sales agent with a person other than a principal broker;
- 1089 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
1090 to another and comes into the person's possession;
- 1091 (b) commingling money described in Subsection (4)(a) with the person's own money;
1092 or
- 1093 (c) diverting money described in Subsection (4)(a) from the purpose for which the
1094 money is received;
- 1095 (5) paying or offering to pay valuable consideration~~[, as defined by the commission,]~~ to
1096 a person not licensed under this chapter, except that valuable consideration may be shared:
- 1097 (a) with a principal broker of another jurisdiction; or
- 1098 (b) as provided under:
- 1099 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- 1100 (ii) Title 16, Chapter 11, Professional Corporation Act; or
- 1101 (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
1102 appropriate pursuant to Section [48-3a-1405](#);
- 1103 (6) for a principal broker, paying or offering to pay a sales agent or associate broker
1104 who is not affiliated with the principal broker at the time the sales agent or associate broker
1105 earned the compensation;
- 1106 (7) being incompetent to act as a principal broker, associate broker, or sales agent in
1107 such manner as to safeguard the interests of the public;
- 1108 (8) failing to voluntarily furnish a copy of a document to the parties before and after the
1109 execution of a document;
- 1110 (9) failing to keep and make available for inspection by the division a record of each
1111 transaction, including:
- 1112 (a) the names of buyers and sellers or lessees and lessors;

- 1113 (b) the identification of real estate;
- 1114 (c) the sale or rental price;
- 1115 (d) money received in trust;
- 1116 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- 1117 (f) any other information required by rule;
- 1118 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
- 1119 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 1120 ~~[(11) being convicted, within five years of the most recent application for licensure, of~~
- 1121 ~~a criminal offense involving moral turpitude regardless of whether:]~~
- 1122 ~~[(a) the criminal offense is related to real estate; or]~~
- 1123 ~~[(b) the conviction is based upon a plea of nolo contendere;]~~
- 1124 ~~[(12) having, within five years of the most recent application for a license under this~~
- 1125 ~~chapter, entered any of the following related to a criminal offense involving moral turpitude:]~~
- 1126 ~~[(a) a plea in abeyance agreement;]~~
- 1127 ~~[(b) a diversion agreement;]~~
- 1128 ~~[(c) a withheld judgment; or]~~
- 1129 ~~[(d) an agreement in which a charge was held in suspense during a period of time when~~
- 1130 ~~the licensee was on probation or was obligated to comply with conditions outlined by a court;]~~
- 1131 (11) regardless of whether the crime is related to the business of real estate:
- 1132 (a) be convicted of:
- 1133 (i) a felony; or
- 1134 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 1135 (A) a class A misdemeanor;
- 1136 (B) a class B misdemeanor; or
- 1137 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1138 (b) plead guilty or nolo contendere to:
- 1139 (i) a felony; or
- 1140 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 1141 (A) a class A misdemeanor;
- 1142 (B) a class B misdemeanor; or
- 1143 (C) a criminal offense comparable to a class A or class B misdemeanor;

- 1144 (c) enter into a plea in abeyance agreement in relation to:
- 1145 (i) a felony; or
- 1146 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 1147 (A) a class A misdemeanor;
- 1148 (B) a class B misdemeanor; or
- 1149 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 1150 ~~[(13)]~~ (12) advertising the availability of real estate or the services of a licensee in a
- 1151 false, misleading, or deceptive manner;
- 1152 ~~[(14)]~~ (13) in the case of a principal broker or a branch broker, failing to exercise
- 1153 active and reasonable supervision, as the commission may define by rule made in accordance
- 1154 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the
- 1155 principal broker's or branch broker's licensed or unlicensed staff;
- 1156 ~~[(15)]~~ (14) violating or disregarding:
- 1157 (a) this chapter;
- 1158 (b) an order of the commission; or
- 1159 (c) the rules adopted by the commission and the division;
- 1160 ~~[(16)]~~ (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a
- 1161 real estate transaction;
- 1162 ~~[(17)]~~ (16) any other conduct which constitutes dishonest dealing;
- 1163 ~~[(18) unprofessional conduct as defined by statute or rule;]~~
- 1164 ~~[(19)]~~ (17) having one of the following suspended, revoked, surrendered, or cancelled
- 1165 on the basis of misconduct in a professional capacity that relates to character, honesty,
- 1166 integrity, or truthfulness:
- 1167 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 1168 (b) another license, registration, or certificate to engage in an occupation or profession
- 1169 issued by this state or another jurisdiction;
- 1170 ~~[(20)]~~ (18) failing to respond to a request by the division in an investigation authorized
- 1171 under this chapter within 10 days after the day on which the request is served, including:
- 1172 (a) failing to respond to a subpoena;
- 1173 (b) withholding evidence; or
- 1174 (c) failing to produce documents or records;

- 1175 [~~(21)~~] (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
1176 (a) providing a title insurance product or service without the approval required by
1177 Section 31A-2-405; or
1178 (b) knowingly providing false or misleading information in the statement required by
1179 Subsection 31A-2-405(2);
1180 [~~(22)~~] (20) violating an independent contractor agreement between a principal broker
1181 and a sales agent or associate broker as evidenced by a final judgment of a court;
1182 [~~(23)~~] (21) (a) engaging in an act of loan modification assistance that requires licensure
1183 as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing
1184 Act, without being licensed under that chapter;
1185 (b) engaging in an act of foreclosure rescue without entering into a written agreement
1186 specifying what one or more acts of foreclosure rescue will be completed;
1187 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an
1188 act of foreclosure rescue by:
1189 (i) suggesting to the person that the licensee has a special relationship with the person's
1190 lender or loan servicer; or
1191 (ii) falsely representing or advertising that the licensee is acting on behalf of:
1192 (A) a government agency;
1193 (B) the person's lender or loan servicer; or
1194 (C) a nonprofit or charitable institution; or
1195 (d) recommending or participating in a foreclosure rescue that requires a person to:
1196 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
1197 has a business relationship or financial interest;
1198 (ii) make a mortgage payment to a person other than the person's loan servicer; or
1199 (iii) refrain from contacting the person's:
1200 (A) lender;
1201 (B) loan servicer;
1202 (C) attorney;
1203 (D) credit counselor; or
1204 (E) housing counselor;
1205 [~~(24)~~] (22) taking or removing from the premises of a main office or a branch office, or

- 1206 otherwise limiting a real estate brokerage's access to or control over, a record that:
- 1207 (a) (i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated
- 1208 independent contractor prepared; and
- 1209 (ii) is related to the business of:
- 1210 (A) the real estate brokerage; or
- 1211 (B) an associate broker, a branch broker, or a sales agent of the real estate brokerage; or
- 1212 (b) is related to the business administration of the real estate brokerage;
- 1213 ~~[(25)]~~ (23) as a principal broker, placing a lien on real property, unless authorized by
- 1214 law;
- 1215 ~~[(26)]~~ (24) as a sales agent or associate broker, placing a lien on real property for an
- 1216 unpaid commission or other compensation related to real estate brokerage services; or
- 1217 ~~[(27)]~~ (25) failing to timely disclose to a buyer or seller an affiliated business
- 1218 arrangement, as defined in Section [31A-23a-1001](#), in accordance with the federal Real Estate
- 1219 Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.
- 1220 Section 12. Section **61-2f-402** is amended to read:
- 1221 **61-2f-402. Investigations.**
- 1222 (1) The division may conduct a public or private investigation within or outside of this
- 1223 state as the division considers necessary to determine whether a person has violated, is
- 1224 violating, or is about to violate this chapter or any rule or order under this chapter.
- 1225 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms
- 1226 under this chapter, the division may require or permit a person to file a statement in writing,
- 1227 under oath or otherwise as to the facts and circumstances concerning the matter to be
- 1228 investigated.
- 1229 (3) For the purpose of the investigation described in Subsection (1), the division or an
- 1230 employee designated by the division may:
- 1231 (a) administer an oath or affirmation;
- 1232 (b) issue a subpoena that requires:
- 1233 (i) the attendance and testimony of a witness; or
- 1234 (ii) the production of evidence;
- 1235 (c) take evidence;
- 1236 (d) require the production of a book, paper, contract, record, other document, or

1237 information relevant to the investigation; and

1238 (e) serve a subpoena by certified mail.

1239 (4) (a) A court of competent jurisdiction shall enforce, according to the practice and
1240 procedure of the court, a subpoena issued by the division.

1241 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee
1242 required by the service statutes of the state where the witness or evidence is located.

1243 (5) (a) If a person is found to have violated this chapter or a rule made under this
1244 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1245 document, or record required under this chapter, including the costs incurred to copy an
1246 electronic book, paper, contract, document, or record in a universally readable format.

1247 (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the
1248 person's license, certification, or registration is automatically suspended:

1249 (i) beginning the day on which the payment of costs is due; and

1250 (ii) ending the day on which the costs are paid.

1251 (6) (a) Except as provided in ~~[Subsection]~~ Subsections (6)(b) and (c), the division shall
1252 commence a disciplinary action under this chapter no later than the earlier of the following:

1253 (i) four years after the day on which the violation is reported to the division; or

1254 (ii) 10 years after the day on which the violation occurred.

1255 (b) Except as provided in Subsection (6)(c), the division shall commence a disciplinary
1256 action within four years after the day on which a violation occurred, if the violation was of:

1257 (i) Section [61-2f-206](#);

1258 (ii) Subsection [61-2f-401](#)(8), which prohibits failure to voluntarily furnish a copy of a
1259 document to the parties before and after the execution of a document; or

1260 (iii) Subsection [61-2f-401](#)(18), which prohibits failure to respond to a division request
1261 in an investigation within 10 days after the day on which the request is served.

1262 ~~[(b)]~~ (c) The division may commence a disciplinary action under this chapter after the
1263 time period described in Subsection (6)(a) or (b) expires if:

1264 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
1265 settlement; and

1266 (B) the division initiates the disciplinary action no later than one year after the day on
1267 which the judgment is issued or the settlement is final; or

1268 (ii) the division and the person subject to a disciplinary action enter into a written
1269 stipulation to extend the time period described in Subsection (6)(a) or (b).

1270 Section 13. Section **61-2g-401** is amended to read:

1271 **61-2g-401. State-certified and state-licensed appraisers -- Restrictions on use of**
1272 **terms -- Conduct prohibited or required -- Trainee.**

1273 (1) (a) The terms "state-certified general appraiser," "state-certified residential
1274 appraiser," and "state-licensed appraiser":

1275 (i) may only be used to refer to an individual who is certified or licensed under this
1276 chapter; and

1277 (ii) may not be used following, or immediately in connection with, the name or
1278 signature of a firm, partnership, corporation, or group, or in any manner that it might be
1279 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the
1280 individual who is certified or licensed under this chapter.

1281 (b) The requirement of this Subsection (1) may not be construed to prevent a
1282 state-certified general appraiser from signing an appraisal report on behalf of a corporation,
1283 partnership, firm, or group practice if it is clear that:

1284 (i) only the individual is certified; and

1285 (ii) the corporation, partnership, firm, or group practice is not certified.

1286 (c) Except as provided in Section [61-2g-103](#), a certificate or license may not be issued
1287 under this chapter to a corporation, partnership, firm, or group.

1288 (2) (a) A person other than a state-certified general appraiser or state-certified
1289 residential appraiser[;] may not assume or use any title, designation, or abbreviation likely to
1290 create the impression of certification in this state as a real estate appraiser.

1291 (b) A person other than a state-licensed appraiser may not assume or use any title,
1292 designation, or abbreviation likely to create the impression of licensure in this state as a real
1293 estate appraiser.

1294 (3) (a) Only an individual who has qualified under the certification requirements of this
1295 chapter is authorized to prepare and sign a certified appraisal report relating to real estate or
1296 real property in this state.

1297 ~~[(b) If a certified appraisal report is prepared and signed by a state-certified residential~~
1298 ~~appraiser, the certified appraisal report shall state, immediately following the signature on the~~

1299 ~~report, "State-Certified Residential Appraiser."~~]

1300 [~~(e) If a certified appraisal report is prepared and signed by a state-certified general~~
1301 ~~appraiser, the certified appraisal report shall state, immediately following the signature on the~~
1302 ~~report, "State-Certified General Appraiser."~~]

1303 [~~(d) An appraisal report prepared by a state-licensed appraiser shall state, immediately~~
1304 ~~following the signature on the report, "State-Licensed Appraiser."~~]

1305 [~~(e) When signing a certified appraisal report, a state-certified appraiser shall also place~~
1306 ~~on the report, immediately below the state-certified appraiser's signature the state-certified~~
1307 ~~appraiser's certificate number and its expiration date.]~~

1308 [~~(f)~~] (b) A state-certified residential appraiser may not prepare a certified appraisal
1309 report outside the state-certified residential appraiser's authority as defined in Section
1310 [61-2g-312](#).

1311 [~~(g)~~] (c) A state-licensed appraiser who assisted in the preparation of a certified
1312 appraisal report is authorized to cosign the certified appraisal report.

1313 (4) A person who has not qualified under this chapter may not describe or refer to any
1314 appraisal or appraisal report relating to real estate or real property in this state by the terms
1315 "certified appraisal" or "certified appraisal report."

1316 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
1317 with the concurrence of the division, the board may make rules for the administration of this
1318 section regarding:

1319 (a) the signing of an appraisal report; or

1320 (b) the disclosure and use of an appraiser or an appraiser trainee's division-assigned
1321 credential, registration, license, or certification number.

1322 [~~(5)~~] (6) If a trainee assists a state-certified appraiser in the preparation of an appraisal
1323 report, the appraisal report shall disclose:

1324 (a) the trainee's name; and

1325 (b) the extent to which the trainee assists in the preparation of the appraisal report.

1326 Section 14. Section **61-2g-405** is amended to read:

1327 **61-2g-405. Recordkeeping requirements.**

1328 (1) Subject to Subsection (2), a person licensed or certified under this chapter [~~and a~~
1329 ~~person required to be registered under this chapter before May 3, 2001,~~] shall retain for a

1330 period of five years the original or a true copy of:

1331 (a) each written contract engaging the person's services for real estate or real property
1332 appraisal work;

1333 (b) each appraisal report prepared or signed by the person; and

1334 (c) the supporting data assembled and formulated by the appraiser in preparing each
1335 appraisal report.

1336 (2) The five-year period for retention of records is applicable to each engagement of
1337 the services of the appraiser and begins upon the date of the delivery of each appraisal report to
1338 the client unless, within the five-year period, the appraiser is notified that the appraisal or the
1339 appraisal report is involved in litigation, in which event the records must be maintained for the
1340 longer of:

1341 (a) five years; or

1342 (b) two years following the date of the final disposition of the litigation.

1343 (3) Upon reasonable notice, a person licensed or certified under this chapter [~~and a~~
1344 ~~person required to be registered under this chapter before May 3, 2001,~~] shall make the records
1345 required to be maintained under this chapter available to the division for inspection and
1346 copying.

1347 Section 15. Section **61-2g-502** is amended to read:

1348 **61-2g-502. Disciplinary action -- Grounds.**

1349 (1) (a) The board may order disciplinary action, with the concurrence of the division,
1350 against a person:

1351 (i) registered, licensed, or certified under this chapter; or

1352 (ii) required to be registered, licensed, or certified under this chapter.

1353 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board
1354 action may include:

1355 (i) revoking, suspending, or placing a person's registration, license, or certification on
1356 probation;

1357 (ii) denying a person's original registration, license, or certification;

1358 (iii) denying a person's renewal license, certification, or registration;

1359 (iv) in the case of denial or revocation of a registration, license, or certification, setting
1360 a waiting period for an applicant to apply for a registration, license, or certification under this

1361 chapter;

1362 (v) ordering remedial education;

1363 (vi) imposing a civil penalty upon a person not to exceed the greater of:

1364 (A) \$5,000 for each violation; or

1365 (B) the amount of any gain or economic benefit from a violation;

1366 (vii) issuing a cease and desist order;

1367 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board,

1368 with the concurrence of the division, finds that the person complies with court ordered

1369 restitution; or

1370 (ix) doing any combination of Subsections (1)(b)(i) through (viii).

1371 (c) (i) If the board or division issues an order that orders a fine or educational

1372 requirements as part of the disciplinary action against a person, including a stipulation and

1373 order, the board or division shall state in the order the deadline by which the person shall

1374 comply with the fine or educational requirements.

1375 (ii) If a person fails to comply with a stated deadline:

1376 (A) the person's license, certificate, or registration is automatically suspended:

1377 (I) beginning on the day specified in the order as the deadline for compliance; and

1378 (II) ending the day on which the person complies in full with the order; and

1379 (B) if the person fails to pay a fine required by an order, the division may begin a

1380 collection process:

1381 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,

1382 Utah Administrative Rulemaking Act; and

1383 (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

1384 (2) The following are grounds for disciplinary action under this section:

1385 (a) procuring or attempting to procure a registration, license, or certification under this

1386 chapter:

1387 (i) by fraud; or

1388 (ii) by making a false statement, submitting false information, or making a material

1389 misrepresentation in an application filed with the division;

1390 (b) paying money or attempting to pay money other than a fee provided for by this

1391 chapter to a member or employee of the division to procure a registration, license, or

1392 certification under this chapter;

1393 (c) an act or omission in the practice of real estate appraising that constitutes
1394 dishonesty, fraud, or misrepresentation;

1395 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of
1396 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

1397 ~~[(e) a guilty plea to a criminal offense involving moral turpitude that is held in
1398 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
1399 contendere, of a criminal offense involving moral turpitude;]~~

1400 (e) regardless of whether the crime is related to the appraisal business, to:

1401 (i) be convicted of a felony;

1402 (ii) be convicted of any of the following involving fraud, misrepresentation, theft, or
1403 dishonesty:

1404 (A) a class A misdemeanor;

1405 (B) a class B misdemeanor; or

1406 (C) a criminal offense comparable to a class A or class B misdemeanor;

1407 (iii) plead guilty or nolo contendere to a felony;

1408 (iv) plead guilty or nolo contendere to any of the following involving fraud,
1409 misrepresentation, theft, or dishonesty:

1410 (A) a class A misdemeanor;

1411 (B) a class B misdemeanor; or

1412 (C) a criminal offense comparable to a class A or class B misdemeanor;

1413 (v) enter into a plea in abeyance agreement involving a felony; or

1414 (vi) enter into a plea in abeyance agreement involving any of the following involving
1415 fraud, misrepresentation, theft, or dishonesty:

1416 (A) a class A misdemeanor;

1417 (B) a class B misdemeanor; or

1418 (C) a criminal offense comparable to a class A or class B misdemeanor;

1419 (f) engaging in the business of real estate appraising under an assumed or fictitious
1420 name not properly registered in this state;

1421 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
1422 chapter in connection with an appraisal of real estate or real property in this state;

- 1423 (h) making a false or misleading statement in:
- 1424 (i) that portion of a written appraisal report that deals with professional qualifications;
- 1425 or
- 1426 (ii) testimony concerning professional qualifications;
- 1427 (i) violating or disregarding:
- 1428 (i) this chapter;
- 1429 (ii) an order of:
- 1430 (A) the board; or
- 1431 (B) the division, in a case when the board delegates to the division the authority to
- 1432 make a decision on behalf of the board; or
- 1433 (iii) a rule issued under this chapter;
- 1434 (j) violating the confidential nature of governmental records to which a person
- 1435 registered, licensed, or certified under this chapter gained access through employment or
- 1436 engagement as an appraiser by a governmental agency;
- 1437 (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was
- 1438 contingent upon:
- 1439 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;
- 1440 (ii) the analysis, opinion, conclusion, or valuation reached; or
- 1441 (iii) the consequences resulting from the appraisal assignment;
- 1442 (l) unprofessional conduct as defined by statute or rule;
- 1443 (m) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):
- 1444 (i) providing a title insurance product or service without the approval required by
- 1445 Section [31A-2-405](#); or
- 1446 (ii) knowingly providing false or misleading information in the statement required by
- 1447 Subsection [31A-2-405\(2\)](#); or
- 1448 (n) other conduct that constitutes dishonest dealing.
- 1449 (3) A person previously licensed, certified, or registered under this chapter remains
- 1450 responsible for, and is subject to disciplinary action for, an act that the person committed, while
- 1451 the person was licensed, certified, or registered, in violation of this chapter or an administrative
- 1452 rule in effect at the time that the person committed the act, regardless of whether the person is
- 1453 currently licensed, certified, or registered.