

DIVISION OF REAL ESTATE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill amends provisions related to reporting and licensing requirements under the jurisdiction of the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the citation period following the occurrence of a violation;
- ▶ exempts a loan processor or loan underwriter who is not a mortgage loan originator when employed by, and acting on behalf of, a person or entity licensed under this chapter;
- ▶ modifies quarterly reporting requirements;
- ▶ permits the commission of powers and duties under certain circumstances;
- ▶ provides licensing standards and practice requirements for a branch broker, property management sales agent, and dual broker; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 29 **61-2-203**, as last amended by Laws of Utah 2016, Chapter 384
- 30 **61-2c-102**, as last amended by Laws of Utah 2016, Chapter 384
- 31 **61-2c-105**, as last amended by Laws of Utah 2015, Chapters 226 and 262
- 32 **61-2c-204.1**, as last amended by Laws of Utah 2015, Chapter 262
- 33 **61-2c-206**, as last amended by Laws of Utah 2015, Chapter 262
- 34 **61-2c-301**, as last amended by Laws of Utah 2016, Chapter 384
- 35 **61-2c-302**, as last amended by Laws of Utah 2012, Chapter 166
- 36 **61-2c-401**, as last amended by Laws of Utah 2016, Chapter 384
- 37 **61-2e-201**, as last amended by Laws of Utah 2012, Chapter 166
- 38 **61-2e-307**, as last amended by Laws of Utah 2016, Chapter 384
- 39 **61-2e-401**, as last amended by Laws of Utah 2016, Chapter 384
- 40 **61-2f-102**, as last amended by Laws of Utah 2016, Chapters 381 and 384
- 41 **61-2f-202**, as last amended by Laws of Utah 2016, Chapter 384
- 42 **61-2f-206**, as last amended by Laws of Utah 2016, Chapter 25
- 43 **61-2f-304**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 44 **61-2f-401**, as last amended by Laws of Utah 2016, Chapter 384
- 45 **61-2f-402**, as last amended by Laws of Utah 2016, Chapter 384
- 46 **61-2f-403**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 47 **61-2g-305**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 48 **61-2g-501**, as last amended by Laws of Utah 2016, Chapter 384



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

51 Section 1. Section **61-2-203** is amended to read:

52 **61-2-203. Adjudicative proceedings -- Citation authority.**

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

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

- 56 (a) a citation, pursuant to Subsection (3);
- 57 (b) a notice of agency action; or
- 58 (c) a notice of formal or informal proceeding.
- 59 (3) In addition to any other statutory penalty for a violation related to an occupation or
- 60 profession regulated under this title, the division may issue a citation to a person who, upon
- 61 inspection or investigation, the division concludes to have violated:
- 62 (a) Subsection 61-2c-201(1), which requires licensure;
- 63 (b) Subsection 61-2c-201(4), which requires entity licensure;
- 64 (c) Subsection 61-2c-205(3), which requires notification of a change in specified
- 65 information regarding a licensee;
- 66 (d) Subsection 61-2c-205(4), which requires notification of specified legal actions;
- 67 (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division
- 68 within the required time period;
- 69 (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the
- 70 division;
- 71 (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
- 72 (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading
- 73 advertising;
- 74 (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed
- 75 work if unlicensed;
- 76 (j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a
- 77 quarterly report of condition;
- 78 [~~(j)~~] (k) Subsection 61-2e-201(1), which requires registration;
- 79 [~~(k)~~] (l) Subsection 61-2e-203(4), which requires a notification of a change in
- 80 ownership;
- 81 [~~(l)~~] (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious
- 82 name;

83 ~~[(m)]~~ (n) Subsection 61-2e-401(1)(b), which prohibits failure to respond to a request by
84 the division;

85 ~~[(n)]~~ (o) Subsection 61-2f-201(1), which requires licensure;

86 ~~[(o)]~~ (p) Subsection 61-2f-206(1), which requires entity registration;

87 ~~[(p)]~~ (q) Subsection 61-2f-301(1), which requires notification of a specified legal
88 action;

89 ~~[(q)]~~ (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial
90 misrepresentation;

91 ~~[(r)]~~ (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not
92 affiliated with a principal broker;

93 ~~[(s)]~~ (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records for
94 inspection by the division;

95 ~~[(t)]~~ (u) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive
96 advertising;

97 ~~[(u)]~~ (v) Subsection 61-2f-401(20), which prohibits failing to respond to a division
98 request;

99 ~~[(v)]~~ (w) Subsection 61-2g-301(1), which requires licensure;

100 ~~[(w)]~~ (x) Subsection 61-2g-405(3), which requires making records required to be
101 maintained available to the division;

102 ~~[(x)]~~ (y) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious
103 name;

104 ~~[(y)]~~ (z) a rule made pursuant to any Subsection listed in this Subsection (3);

105 ~~[(z)]~~ (aa) an order of the division; or

106 ~~[(aa)]~~ (bb) an order of the commission or board that oversees the person's profession.

107 (4) (a) In accordance with Subsection (9), the division may assess a fine against a
108 person for a violation of a provision listed in Subsection (3), as evidenced by:

109 (i) an uncontested citation;

- 110 (ii) a stipulated settlement; or
- 111 (iii) a finding of a violation in an adjudicative proceeding.
- 112 (b) The division may, in addition to or in lieu of a fine under Subsection (4)(a), order
- 113 the person to cease and desist from an activity that violates a provision listed in Subsection (3).
- 114 (5) Except as provided in Subsection (7)(d), the division may not use a citation to
- 115 effect a license:
 - 116 (a) denial;
 - 117 (b) probation;
 - 118 (c) suspension; or
 - 119 (d) revocation.
- 120 (6) (a) A citation issued by the division shall:
 - 121 (i) be in writing;
 - 122 (ii) describe with particularity the nature of the violation, including a reference to the
 - 123 provision of the statute, rule, or order alleged to have been violated;
 - 124 (iii) clearly state that the recipient must notify the division in writing within 20
 - 125 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
 - 126 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
 - 127 (iv) clearly explain the consequences of failure to timely contest the citation or to make
 - 128 payment of a fine assessed by the citation within the time period specified in the citation.
- 129 (b) The division may issue a notice in lieu of a citation.
- 130 (7) (a) A citation becomes final:
 - 131 (i) if within 20 calendar days from the service of the citation, the person to whom the
 - 132 citation was issued fails to request a hearing to contest the citation; or
 - 133 (ii) if the director or the director's designee conducts a hearing pursuant to a timely
 - 134 request for a hearing and issues an order finding that a violation has occurred.
- 135 (b) The 20-day period to contest a citation may be extended by the division for cause.
- 136 (c) A citation that becomes the final order of the division due to a person's failure to

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

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

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

143 (8) (a) The division may not issue a citation under this section after the expiration of
144 [~~six months~~] one year following the occurrence of a violation.

145 (b) The division may issue a notice to address a violation that is outside of the
146 [~~six-month~~] one-year citation period.

147 (9) The director or the director's designee shall assess a fine with a citation in an
148 amount that is no more than:

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

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

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

153 (10) (a) An action for a first or second offense for which the division has not issued
154 final order does not preclude the division from initiating a subsequent action for a second or
155 subsequent offense while the preceding action is pending.

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

159 (11) (a) If a person does not pay a penalty, the director may collect the unpaid penalty
160 by:

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

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

163 (A) where the person resides; or

164 (B) where the office of the director is located.

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

167 (c) A court may award reasonable attorney fees and costs to the division in an action
168 brought by the division to enforce the provisions of this section.

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

170 **61-2c-102. Definitions.**

171 (1) As used in this chapter:

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

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

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

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

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

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

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

182 (i) licensed as a lending manager; and

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

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

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

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

190 (iii) that operates under:

- 191 (A) the same business name as the licensed entity; or
- 192 (B) another trade name that is registered with the division under the entity license.
- 193 (g) "Business day" means a day other than:
- 194 (i) a Saturday;
- 195 (ii) a Sunday; or
- 196 (iii) a federal or state holiday.
- 197 (h) (i) "Business of residential mortgage loans" means for compensation or in the
- 198 expectation of compensation to:
- 199 (A) engage in an act that makes an individual a mortgage loan originator;
- 200 (B) make or originate a residential mortgage loan;
- 201 (C) directly or indirectly solicit a residential mortgage loan for another;
- 202 (D) unless exempt under Section 61-2c-105 or excluded under Subsection (1)(h)(ii),
- 203 render services related to the origination of a residential mortgage loan including:
- 204 (I) preparing a loan package;
- 205 (II) communicating with the borrower or lender;
- 206 (III) advising on a loan term;
- 207 [~~(IV) acting as a loan processor or loan underwriter without being employed by a~~
- 208 ~~licensed entity; or~~]
- 209 [~~(V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter;~~
- 210 ~~or~~]
- 211 (IV) receiving, collecting, or distributing information common for the processing or
- 212 underwriting of a loan in the mortgage industry; or
- 213 (V) communicating with a consumer to obtain information necessary for the processing
- 214 or underwriting of a residential mortgage loan; or
- 215 (E) engage in loan modification assistance.
- 216 (ii) "Business of residential mortgage loans" does not include:
- 217 [~~(A) if working as an employee under the direction of and subject to the supervision~~

218 and instruction of a person licensed under this chapter, the performance of a clerical or support
219 duty, including:]

220 [~~(I)~~ the receipt, collection, or distribution of information common for the processing or
221 underwriting of a loan in the mortgage industry other than taking an application;]

222 [~~(II)~~ communicating with a consumer to obtain information necessary for the
223 processing or underwriting of a residential mortgage loan;]

224 [~~(III)~~ word processing;]

225 [~~(IV)~~ sending correspondence;]

226 [~~(V)~~ assembling files; or]

227 [~~(VI)~~ acting as a loan processor or loan underwriter;]

228 [~~(B)~~ acting as a loan underwriter under the direction and control of an employer
229 licensed under this chapter;]

230 [~~(C)~~ acting as a loan underwriter, as an employee of a depository institution,
231 exclusively in the capacity of the depository institution's employee;]

232 [~~(D)~~] (A) ownership of an entity that engages in the business of residential mortgage
233 loans if the owner does not personally perform the acts listed in Subsection (1)(h)(i);

234 [~~(E)~~ except if an individual will engage in an activity as a mortgage loan originator;]

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

236 (I) a loan wholesaler;

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

238 [~~(III)~~ a loan underwriter;]

239 [~~(IV)~~] (III) a loan closer; or

240 [~~(V)~~] (IV) funding a loan; or

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

243 (i) "Certified education provider" means a person who is certified under Section
244 [61-2c-204.1](#) to provide one or more of the following:

- 245 (i) Utah-specific prelicensing education; or
246 (ii) Utah-specific continuing education.
247 (j) "Closed-end" means a loan:
248 (i) with a fixed amount borrowed; and
249 (ii) that does not permit additional borrowing secured by the same collateral.
250 (k) "Commission" means the Residential Mortgage Regulatory Commission created in
251 Section [61-2c-104](#).
252 (l) "Community development financial institution" means the same as that term is
253 defined in 12 U.S.C. Sec. 4702.
254 (m) "Compensation" means anything of economic value that is paid, loaned, granted,
255 given, donated, or transferred to an individual or entity for or in consideration of:
256 (i) services;
257 (ii) personal or real property; or
258 (iii) another thing of value.
259 (n) "Concurrence" means that entities given a concurring role must jointly agree for the
260 action to be taken.
261 (o) "Continuing education" means education taken by an individual licensed under this
262 chapter in order to meet the education requirements imposed by Sections [61-2c-204.1](#) and
263 [61-2c-205](#) to renew a license under this chapter.
264 (p) "Control," as used in Subsection [61-2c-105\(2\)\(f\)](#), means the power to directly or
265 indirectly:
266 (i) direct or exercise a controlling interest over:
267 (A) the management or policies of an entity; or
268 (B) the election of a majority of the directors, officers, managers, or managing partners
269 of an entity;
270 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
271 (iii) vote more than 5% of a class of voting securities of an entity by another entity.

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

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

276 (A) a manager;

277 (B) a managing partner;

278 (C) a director;

279 (D) an executive officer; or

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

281 Subsection (1)(q)(ii).

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

283 (s) "Director" means the director of the division.

284 (t) "Division" means the Division of Real Estate.

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

287 (i) a condominium unit;

288 (ii) a cooperative unit;

289 (iii) a manufactured home; or

290 (iv) a house.

291 (v) "Employee":

292 (i) means an individual:

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

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

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

- 299 (w) "Entity" means:
- 300 (i) a corporation;
- 301 (ii) a limited liability company;
- 302 (iii) a partnership;
- 303 (iv) a company;
- 304 (v) an association;
- 305 (vi) a joint venture;
- 306 (vii) a business trust;
- 307 (viii) a trust; or
- 308 (ix) another organization.
- 309 (x) "Executive director" means the executive director of the Department of Commerce.
- 310 (y) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage
- 311 Licensing, 12 U.S.C. Sec. 5101 et seq.
- 312 (z) "Foreclosure rescue" means, for compensation or with the expectation of receiving
- 313 valuable consideration, to:
- 314 (i) engage, or offer to engage, in an act that:
- 315 (A) the person represents will assist a borrower in preventing a foreclosure; and
- 316 (B) relates to a transaction involving the transfer of title to residential real property; or
- 317 (ii) as an employee or agent of another person:
- 318 (A) solicit, or offer that the other person will engage in an act described in Subsection
- 319 (1)(z)(i); or
- 320 (B) negotiate terms in relationship to an act described in Subsection (1)(z)(i).
- 321 (aa) "Inactive status" means a dormant status into which an unexpired license is placed
- 322 when the holder of the license is not currently engaging in the business of residential mortgage
- 323 loans.
- 324 (bb) "Lending manager" means an individual licensed as a lending manager under
- 325 Section [61-2c-206](#) to transact the business of residential mortgage loans.

- 326 (cc) "Licensee" means a person licensed with the division under this chapter.
- 327 (dd) "Licensing examination" means the examination required by Section 61-2c-204.1
328 or 61-2c-206 for an individual to obtain a license under this chapter.
- 329 (ee) "Loan modification assistance" means, for compensation or with the expectation
330 of receiving valuable consideration, to:
- 331 (i) act, or offer to act, on behalf of a person to:
- 332 (A) obtain a loan term of a residential mortgage loan that is different from an existing
333 loan term including:
- 334 (I) an increase or decrease in an interest rate;
- 335 (II) a change to the type of interest rate;
- 336 (III) an increase or decrease in the principal amount of the residential mortgage loan;
- 337 (IV) a change in the number of required period payments;
- 338 (V) an addition of collateral;
- 339 (VI) a change to, or addition of, a prepayment penalty;
- 340 (VII) an addition of a cosigner; or
- 341 (VIII) a change in persons obligated under the existing residential mortgage loan; or
- 342 (B) substitute a new residential mortgage loan for an existing residential mortgage
343 loan; or
- 344 (ii) as an employee or agent of another person:
- 345 (A) solicit, or offer that the other person will engage in an act described in Subsection
346 (1)(ee)(i); or
- 347 (B) negotiate terms in relationship to an act described in Subsection (1)(ee)(i).
- 348 (ff) (i) "Mortgage loan originator" means an individual who, for compensation or in
349 expectation of compensation:
- 350 (A) (I) takes a residential mortgage loan application;
- 351 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:
- 352 (Aa) a purchase;

- 353 (Bb) a refinance;
- 354 (Cc) a loan modification assistance; or
- 355 (Dd) a foreclosure rescue; or
- 356 (III) directly or indirectly solicits a residential mortgage loan for another person; and
- 357 (B) is licensed as a mortgage loan originator in accordance with this chapter.
- 358 (ii) "Mortgage loan originator" does not include a person who:
- 359 (A) is described in Subsection (1)(ff)(i), but who performs exclusively administrative
- 360 or clerical tasks as described in Subsection (1)(h)(ii)(A);
- 361 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
- 362 (II) performs only real estate brokerage activities; and
- 363 (III) receives no compensation from:
- 364 (Aa) a lender;
- 365 (Bb) a lending manager; or
- 366 (Cc) an agent of a lender or lending manager; or
- 367 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
- 368 11 U.S.C. Sec. 101(53D).
- 369 (gg) "Nationwide database" means the Nationwide Mortgage Licensing System and
- 370 Registry, authorized under federal licensing requirements.
- 371 (hh) "Nontraditional mortgage product" means a mortgage product other than a 30-year
- 372 fixed rate mortgage.
- 373 (ii) "Person" means an individual or entity.
- 374 (jj) "Prelicensing education" means education taken by an individual seeking to be
- 375 licensed under this chapter in order to meet the education requirements imposed by Section
- 376 [61-2c-204.1](#) or [61-2c-206](#) for an individual to obtain a license under this chapter.
- 377 (kk) "Principal lending manager" means an individual:
- 378 (i) licensed as a lending manager under Section [61-2c-206](#); and
- 379 (ii) identified in the nationwide database by the individual's sponsoring entity as the

380 entity's principal lending manager.

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

383 (mm) "Record" means information that is:

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

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

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

387 (II) in a perceivable and reproducible form.

388 (nn) "Referral fee":

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

392 (ii) does not include:

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

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

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

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

402 (A) mortgage;

403 (B) deed of trust; or

404 (C) consensual security interest; and

405 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
406 (1)(oo)(i):

- 407 (A) is on a dwelling located in the state; and
408 (B) is created with the consent of the owner of the residential real property.
409 (pp) "Settlement" means the time at which each of the following is complete:
410 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the
411 escrow or closing office each document required by:
412 (A) the real estate purchase contract;
413 (B) the lender;
414 (C) the title insurance company;
415 (D) the escrow or closing office;
416 (E) the written escrow instructions; or
417 (F) applicable law;
418 (ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office
419 any money, except for the proceeds of any new loan, that the borrower is required to pay; and
420 (iii) if applicable, the seller delivers to the buyer or to the escrow or closing office any
421 money that the seller is required to pay.
422 (qq) "Settlement services" means a service provided in connection with a real estate
423 settlement, including a title search, a title examination, the provision of a title certificate,
424 services related to title insurance, services rendered by an attorney, preparing documents, a
425 property survey, rendering a credit report or appraisal, a pest or fungus inspection, services
426 rendered by a real estate agent or broker, the origination of a federally related mortgage loan,
427 and the processing of a federally related mortgage.
428 (rr) "Sponsorship" means an association in accordance with Section [61-2c-209](#) between
429 an individual licensed under this chapter and an entity licensed under this chapter.
430 (ss) "State" means:
431 (i) a state, territory, or possession of the United States;
432 (ii) the District of Columbia; or
433 (iii) the Commonwealth of Puerto Rico.

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

436 [~~(tt)~~] (uu) "Unique identifier" means the same as that term is defined in 12 U.S.C. Sec.
437 5102.

438 [~~(uu)~~] (vv) "Utah-specific" means an educational [~~or examination~~] requirement under
439 this chapter that relates specifically to Utah.

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

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

445 Section 3. Section **61-2c-105** is amended to read:

446 **61-2c-105. Scope of chapter -- Exemptions.**

447 (1) (a) Except as to an individual who will engage in an activity as a mortgage loan
448 originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien
449 or equivalent security interest on a dwelling.

450 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer
451 Credit Code.

452 (2) The following are exempt from this chapter:

453 (a) the federal government;

454 (b) a state;

455 (c) a political subdivision of a state;

456 (d) an agency of or entity created by a governmental entity described in Subsections

457 (2)(a) through (c) including:

458 (i) the Utah Housing Corporation created in Section [63H-8-201](#);

459 (ii) the Federal National Mortgage Corporation;

460 (iii) the Federal Home Loan Mortgage Corporation;

- 461 (iv) the Federal Deposit Insurance Corporation;
- 462 (v) the Resolution Trust Corporation;
- 463 (vi) the Government National Mortgage Association;
- 464 (vii) the Federal Housing Administration;
- 465 (viii) the National Credit Union Administration;
- 466 (ix) the Farmers Home Administration; and
- 467 (x) the United States Department of Veterans Affairs;
- 468 (e) a depository institution;
- 469 (f) an entity that controls, is controlled by, or is under common control with a
- 470 depository institution;
- 471 (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
- 472 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through
- 473 (f); and
- 474 (ii) including an employee of:
- 475 (A) a depository institution;
- 476 (B) a subsidiary of a depository institution that is:
- 477 (I) owned and controlled by the depository institution; and
- 478 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
- 479 (C) an institution regulated by the Farm Credit Administration;
- 480 (h) except as provided in Subsection (3), a person who:
- 481 (i) makes a loan:
- 482 (A) secured by an interest in real property;
- 483 (B) with the person's own money; and
- 484 (C) for the person's own investment; and
- 485 (ii) that does not engage in the business of making loans secured by an interest in real
- 486 property;
- 487 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of

488 trust, or consensual security interest on real property if the individual or entity:
489 (i) is the seller of real property; and
490 (ii) receives the mortgage, deed of trust, or consensual security interest on real property
491 as security for a separate money obligation;
492 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
493 real property if:
494 (i) the person receives the mortgage, deed of trust, or consensual security interest as
495 security for an obligation payable on an installment or deferred payment basis;
496 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing
497 materials or services used in the improvement of the real property that is the subject of the
498 mortgage, deed of trust, or consensual security interest; and
499 (iii) the mortgage, deed of trust, or consensual security interest is created without the
500 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or
501 consensual security interest;
502 (k) a nonprofit corporation that:
503 (i) (A) is exempt from paying federal income taxes;
504 (B) is certified by the United States Small Business Administration as a small business
505 investment company;
506 (C) is organized to promote economic development in this state; and
507 (D) has as its primary activity providing financing for business expansion; or
508 (ii) is a community development financial institution;
509 (l) except as provided in Subsection (3), a court appointed fiduciary; or
510 (m) an attorney admitted to practice law in this state:
511 (i) if the attorney is not principally engaged in the business of negotiating residential
512 mortgage loans when considering the attorney's ordinary practice as a whole for all the
513 attorney's clients; and
514 (ii) when the attorney engages in loan modification assistance in the course of the

515 attorney's practice as an attorney.

516 (3) An individual who will engage in an activity as a mortgage loan originator is
517 exempt from this chapter only if the individual is an employee or agent exempt under
518 Subsection (2)(g).

519 (4) (a) A loan processor or loan underwriter who is not a mortgage loan originator is
520 not required to obtain a license under this chapter when the loan processor or loan underwriter
521 is:

522 (i) employed by, and acting on behalf of, a person or entity licensed under this chapter;
523 and

524 (ii) under the direction of and subject to the supervision of a person licensed under this
525 chapter.

526 (b) A loan processor or loan underwriter who is an independent contractor is not
527 exempt under Subsection (4)(a).

528 ~~[(4)]~~ (5) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter
529 may not engage in conduct described in Section 61-2c-301 when transacting business of
530 residential mortgage loans.

531 (b) If an attorney exempt from this chapter violates Subsection ~~[(4)]~~ (5)(a), the
532 attorney:

533 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

534 (ii) may be subject to disciplinary action generally applicable to an attorney admitted to
535 practice law in this state.

536 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
537 in violation of Subsection ~~[(4)]~~ (5)(a) or that an attorney subject to this chapter has violated this
538 chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.

539 ~~[(5)]~~ (6) (a) An individual who is exempt under Subsection (2) ~~[or]~~, (3), or (4) may
540 voluntarily obtain a license under this chapter by complying with Part 2, Licensure.

541 (b) An individual who voluntarily obtains a license under this Subsection ~~[(5)]~~ (6) shall

542 comply with all the provisions of this chapter.

543 Section 4. Section **61-2c-204.1** is amended to read:

544 **61-2c-204.1. Education providers -- Education requirements -- Examination**
545 **requirements.**

546 (1) As used in this section:

547 (a) "Approved continuing education course" means a course of continuing education
548 that is approved by the nationwide database or by the division.

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

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

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

555 (i) certification criteria and procedures to become a certified education provider; and

556 (ii) standards of conduct for a certified education provider.

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

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

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

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

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

565 or

566 (ii) approve:

567 (A) Utah-specific prelicensing education; or

568 (B) Utah-specific continuing education courses.

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

570 (i) license an individual under this chapter as a mortgage loan originator who has not

571 completed the prelicensing education required by this section:

572 (A) before taking the [~~one or more~~] licensing examinations required by Subsection (4);

573 (B) in the number of hours, not to exceed 90 hours, required by rule made by the

574 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

576 (ii) subject to Subsection (6), renew a license of an individual who has not completed

577 the continuing education required by this section and Section 61-2c-205:

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

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

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

581 (iii) license an individual under this chapter as a lending manager who has not

582 completed the prelicensing education required by Section 61-2c-206 before taking the licensing

583 examination required by Section 61-2c-206.

584 (b) Subject to Subsection (3)(a) and with the concurrence of the division, the

585 commission shall determine:

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

587 of prelicensing education required to obtain a license;

588 (ii) the subject matters of the prelicensing education required under this section and

589 Section 61-2c-206, including online education or distance learning options;

590 (iii) the appropriate number of hours of continuing education required to renew a

591 license, including additional continuing education required for a new loan originator; and

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

593 purposes.

594 (c) The commission may appoint a committee to make recommendations to the

595 commission concerning approval of prelicensing education and continuing education courses,

596 except that the commission shall appoint at least one member to the committee to represent
 597 each association that represents a significant number of individuals licensed under this chapter.

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

601 (4) (a) The division may not license an individual under this chapter unless that
 602 individual first passes the ~~[one or more licensing examinations]~~ qualified written national test
 603 developed by the nationwide database that includes the uniform state test content that:

604 ~~[(i) are adopted by the division in accordance with Title 63G, Chapter 3, Utah~~
 605 ~~Administrative Rulemaking Act;]~~

606 ~~[(ii) meet]~~ (i) meets the minimum federal licensing requirements; and

607 ~~[(iii) are]~~ (ii) is administered by an approved examination provider.

608 (b) The commission, with the concurrence of the division, shall determine the
 609 requirements for:

610 ~~[(i) a licensing examination that at least:]~~

611 ~~[(A) meets the minimum federal licensing requirements; and]~~

612 ~~[(B) tests knowledge of the:]~~

613 ~~[(I) fundamentals of the English language;]~~

614 ~~[(II) arithmetic;]~~

615 ~~[(III) provisions of this chapter;]~~

616 ~~[(IV) rules adopted under this chapter;]~~

617 ~~[(V) basic residential mortgage principles and practices; and]~~

618 ~~[(VI) any other aspect of Utah law the commission determines is appropriate; and]~~

619 ~~[(ii) a]~~ (i) the lending manager licensing examination required under Section

620 [61-2c-206](#) that tests the applicant's knowledge of:

621 ~~[(A) meets the requirements of Subsection (4)(b)(i); and]~~

622 ~~[(B) tests knowledge of the:]~~

623 (A) fundamentals of the English language;
624 (B) arithmetic;
625 (C) provisions of this chapter;
626 ~~(D)~~ (D) advanced residential mortgage principles and practices; and
627 ~~(E)~~ (E) other aspects of Utah law the commission, with the concurrence of the
628 division, determines appropriate.

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

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

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

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

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

645 Section 5. Section **61-2c-206** is amended to read:

646 **61-2c-206. Lending manager licenses.**

647 (1) To qualify for licensure as a lending manager under this chapter, an individual
648 shall:

- 649 (a) meet the standards in Section **61-2c-203**;

- 650 (b) successfully complete the following education:
- 651 (i) mortgage loan originator prelicensing education as required by federal licensing
- 652 regulations; and
- 653 (ii) 40 hours of Utah-specific prelicensing education for a lending manager that is
- 654 approved by the division under Section [61-2c-204.1](#);
- 655 (c) successfully complete the following examinations:
- 656 (i) the mortgage loan originator licensing examination, including the national and [state
- 657 components] uniform state test content, as approved by the nationwide database; and
- 658 (ii) the lending manager licensing examination approved by the commission under
- 659 Section [61-2c-204.1](#);
- 660 (d) submit proof, on a form approved by the division, of three years of full-time active
- 661 experience as a mortgage loan originator licensed in any state in the five years preceding the
- 662 day on which the application is submitted, or equivalent experience as approved by the
- 663 commission pursuant to rule that the division makes in accordance with Title 63G, Chapter 3,
- 664 Utah Administrative Rulemaking Act;
- 665 (e) submit an application in a manner established by the division by rule;
- 666 (f) establish sponsorship with an entity licensed under this chapter;
- 667 (g) submit to the criminal background check required by Subsection [61-2c-202\(1\)\(b\)](#);
- 668 and
- 669 (h) pay a fee determined by the division under Section [63J-1-504](#).
- 670 (2) A lending manager may not:
- 671 (a) engage in the business of residential mortgage loans on behalf of more than one
- 672 entity at the same time;
- 673 (b) be sponsored by more than one entity at the same time; or
- 674 (c) act simultaneously as the principal lending manager and branch lending manager
- 675 for the individual's sponsoring entity, unless:
- 676 (i) the sponsoring entity does not originate Utah residential mortgage loans from the

677 sponsoring entity's location; and

678 (ii) the sponsoring entity originates Utah residential mortgage loans from no more than
679 one branch location.

680 (3) An individual who is a lending manager may:

681 (a) transact the business of residential mortgage loans as a mortgage loan originator;
682 and

683 (b) be designated within the nationwide database to act for the individual's sponsoring
684 entity as the principal lending manager, an associate lending manager, or a branch lending
685 manager.

686 Section 6. Section **61-2c-301** is amended to read:

687 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

690 (a) give or receive a referral fee;

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

692 (i) that is excessive; or

693 (ii) without providing to the loan applicant a written statement signed by the loan
694 applicant:

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

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

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

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

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

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

- 704 (i) make a false statement or representation;
- 705 (ii) cause false documents to be generated; or
- 706 (iii) knowingly permit false information to be submitted by any party;
- 707 (e) give or receive compensation or anything of value, or withhold or threaten to
- 708 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
- 709 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
- 710 violation of this section for a licensee to withhold payment because of a bona fide dispute
- 711 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
- 712 of Professional Appraisal Practice;
- 713 (f) violate or not comply with:
- 714 (i) this chapter;
- 715 (ii) an order of the commission or division; or
- 716 (iii) a rule made by the division;
- 717 (g) fail to respond within the required time period to:
- 718 (i) a notice or complaint of the division; or
- 719 (ii) a request for information from the division;
- 720 (h) make false representations to the division, including in a licensure statement;
- 721 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,
- 722 engage in the business of residential mortgage loans with respect to the transaction if the
- 723 person also acts in any of the following capacities with respect to the same residential mortgage
- 724 loan transaction:
- 725 (i) appraiser;
- 726 (ii) escrow agent;
- 727 (iii) real estate agent;
- 728 (iv) general contractor; or
- 729 (v) title insurance producer;
- 730 (j) engage in unprofessional conduct as defined by rule;

- 731 (k) engage in an act or omission in transacting the business of residential mortgage
732 loans that constitutes dishonesty, fraud, or misrepresentation;
- 733 (l) engage in false or misleading advertising;
- 734 (m) (i) fail to account for money received in connection with a residential mortgage
735 loan;
- 736 (ii) use money for a different purpose from the purpose for which the money is
737 received; or
- 738 (iii) except as provided in Subsection (4), retain money paid for services if the services
739 are not performed;
- 740 (n) fail to provide a prospective borrower a copy of each appraisal and any other
741 written valuation developed in connection with an application for credit that is to be secured by
742 a first lien on a dwelling in accordance with Subsection (5);
- 743 (o) engage in an act that is performed to:
- 744 (i) evade this chapter; or
- 745 (ii) assist another person to evade this chapter;
- 746 (p) recommend or encourage default, delinquency, or continuation of an existing
747 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
748 of a residential mortgage loan that will refinance all or part of the indebtedness;
- 749 (q) in the case of the lending manager of an entity or a branch office of an entity, fail to
750 exercise reasonable supervision over the activities of:
- 751 (i) unlicensed staff; or
- 752 (ii) a mortgage loan originator who is affiliated with the lending manager;
- 753 (r) pay or offer to pay an individual who does not hold a license under this chapter for
754 work that requires the individual to hold a license under this chapter;
- 755 (s) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):
- 756 (i) provide a title insurance product or service without the approval required by Section
757 [31A-2-405](#); or

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

760 (t) represent to the public that the person can or will perform any act of a mortgage
761 loan originator if that person is not licensed under this chapter because the person is exempt
762 under Subsection [~~61-2c-102(1)(h)(ii)(A)~~] [61-2c-105\(4\)](#), including through:

- 763 (i) advertising;
- 764 (ii) a business card;
- 765 (iii) stationery;
- 766 (iv) a brochure;
- 767 (v) a sign;
- 768 (vi) a rate list; or
- 769 (vii) other promotional item;

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

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

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

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

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

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

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

- 785 (B) falsely representing or advertising that the licensee is acting on behalf of:
786 (I) a government agency;
787 (II) the person's lender or loan servicer; or
788 (III) a nonprofit or charitable institution;
789 (vi) recommend or participate in a loan modification that requires a person to:
790 (A) transfer title to real property to the licensee or to a third-party with whom the
791 licensee has a business relationship or financial interest;
792 (B) make a mortgage payment to a person other than the person's loan servicer; or
793 (C) refrain from contacting the person's:
794 (I) lender;
795 (II) loan servicer;
796 (III) attorney;
797 (IV) credit counselor; or
798 (V) housing counselor; or
799 (vii) for an agreement for loan modification assistance entered into on or after May 11,
800 2010, engage in an act of loan modification assistance without offering in writing to the person
801 entering into the agreement for loan modification assistance a right to cancel the agreement
802 within three business days after the day on which the person enters the agreement;
803 (v) sign or initial a document on behalf of another person, except for in a circumstance
804 allowed by the division by rule, with the concurrence of the commission, made in accordance
805 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; [or]
806 (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse
807 Mortgage Act[-]; or
808 (x) engage in any act or practice that violates appraisal independence as defined in 15
809 U.S.C. Sec. 1639e or in the policies and procedures of:
810 (i) the Federal Home Loan Mortgage Corporation; or
811 (ii) the Federal National Mortgage Association.

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

- 815 (a) be convicted;
- 816 (b) plead guilty or nolo contendere;
- 817 (c) enter a plea in abeyance; or
- 818 (d) be subjected to a criminal disposition similar to the ones described in Subsections
819 (2)(a) through (c).

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

- 821 (a) in contravention of the lending manager's written policies and instructions, an
822 affiliated licensee of the lending manager violates:
 - 823 (i) this chapter; or
 - 824 (ii) rules made by the division under this chapter;
- 825 (b) the lending manager established and followed reasonable procedures to ensure that
826 affiliated licensees receive adequate supervision;
- 827 (c) upon learning of a violation by an affiliated licensee, the lending manager
828 attempted to prevent or mitigate the damage;
- 829 (d) the lending manager did not participate in or ratify the violation by an affiliated
830 licensee; and
- 831 (e) the lending manager did not attempt to avoid learning of the violation.

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

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

839 (i) as soon as reasonably possible after the appraisal or other valuation is complete; or
840 (ii) three business days before the day of the settlement.

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

844 (i) less than three business days before the day of the settlement; or
845 (ii) at the settlement.

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

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

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

858 Section 7. Section **61-2c-302** is amended to read:

859 **61-2c-302. Record requirements.**

860 (1) For the time period specified in Subsection (2), a licensee shall make or possess any
861 record required for that licensee by a rule made by the division.

862 (2) A licensee shall maintain and safeguard in its possession a record described in
863 Subsection (1) for four years from the last to occur of the following:

864 (a) the final entry on a residential mortgage loan is made by that licensee;
865 (b) if the residential mortgage loan is serviced by the licensee:

- 866 (i) the residential mortgage loan is paid in full; or
- 867 (ii) the licensee ceases to service the residential mortgage loan; or
- 868 (c) if the residential mortgage loan is not serviced by the licensee, the residential
- 869 mortgage loan is closed.

870 (3) A licensee shall, upon the division's request:

871 (a) make available to the division for inspection and copying during normal business

872 hours all records required to be maintained under this chapter; and

873 (b) produce all records described in Subsection (3)(a) that are related to an

874 investigation being conducted by the division at the division office for inspection and copying

875 by the division.

876 (4) A licensee who is an entity shall maintain and produce for inspection by the

877 division a current list of all individuals whose licenses are sponsored by the entity.

878 (5) (a) A licensed entity shall:

879 (i) create, for each quarter of the fiscal year, a report of condition identifying all

880 lending activities, including all loans closed by the entity's sponsored mortgage loan originators

881 during the quarter;

882 (ii) provide each quarterly report of condition to the nationwide database no later than

883 75 days after the last day of the reporting quarter; and

884 (iii) maintain each report of condition submitted to the nationwide database as required

885 by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee submits the

886 report of condition to the nationwide database.

887 (b) Upon request by the division, a mortgage loan originator shall produce a report of

888 condition for inspection by the division.

889 Section 8. Section **61-2c-401** is amended to read:

890 **61-2c-401. Investigations.**

891 (1) The division may, either publicly or privately, investigate or cause to be

892 investigated the actions of:

- 893 (a) (i) a licensee;
- 894 (ii) a person required to be licensed under this chapter; or
- 895 (iii) the following with respect to an entity that is a licensee or an entity required to be
- 896 licensed under this chapter:
- 897 (A) a manager;
- 898 (B) a managing partner;
- 899 (C) a director;
- 900 (D) an executive officer; or
- 901 (E) an individual who performs a function similar to an individual listed in this
- 902 Subsection (1)(a)(iii);
- 903 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or
- 904 (ii) the following with respect to an entity that has applied for a license or renewal of
- 905 licensure under this chapter:
- 906 (A) a manager;
- 907 (B) a managing partner;
- 908 (C) a director;
- 909 (D) an executive officer; or
- 910 (E) an individual who performs a function similar to an individual listed in this
- 911 Subsection (1)(b)(ii); or
- 912 (c) a person who transacts the business of residential mortgage loans within this state.
- 913 (2) In conducting investigations, records inspections, and adjudicative proceedings, the
- 914 division may:
- 915 (a) administer an oath or affirmation;
- 916 (b) issue a subpoena that requires:
- 917 (i) the attendance and testimony of a witness; or
- 918 (ii) the production of evidence;
- 919 (c) take evidence;

920 (d) require the production of a record or information relevant to an investigation; and
921 (e) serve a subpoena by certified mail.

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

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

926 (4) A failure to respond to a request by the division in an investigation authorized
927 under this chapter is considered as a separate violation of this chapter, including:

928 (a) failing to respond to a subpoena;

929 (b) withholding evidence; or

930 (c) failing to produce a record.

931 (5) The division may inspect and copy a record related to the business of residential
932 mortgage loans by a licensee under this chapter, regardless of whether the record is maintained
933 at a business location in Utah, in conducting:

934 (a) investigations of complaints; or

935 (b) inspections of the record required to be maintained under:

936 (i) this chapter; or

937 (ii) rules adopted by the division under this chapter.

938 (6) (a) If a licensee maintains a record required by this chapter and the rules adopted by
939 the division under this chapter outside Utah, the licensee is responsible for all reasonable costs,
940 including reasonable travel costs, incurred by the division in inspecting the record.

941 (b) Upon receipt of notification from the division that a record maintained outside Utah
942 is to be examined in connection with an investigation or an examination, the licensee shall
943 deposit with the division a deposit of \$500 to cover the division's expenses in connection with
944 the examination of the record.

945 (c) If the deposit described in Subsection (6)(b) is insufficient to meet the estimated
946 costs and expenses of examination of the record, the licensee shall make an additional deposit

947 to cover the estimated costs and expenses of the division.

948 (d) (i) A deposit under this Subsection (6) shall be deposited in the General Fund as a
949 dedicated credit to be used by the division under Subsection (6)(a).

950 (ii) The division, with the concurrence of the executive director, may use a deposit as a
951 dedicated credit for the records inspection costs under Subsection (6)(a).

952 (iii) A deposit under this Subsection (6) shall be refunded to the licensee to the extent it
953 is not used, together with an itemized statement from the division of all amounts it has used.

954 (7) Failure to deposit with the division a deposit required to cover the costs of
955 examination of a record that is maintained outside Utah shall result in automatic suspension of
956 a license until the deposit is made.

957 (8) (a) If a person is found to have violated this chapter or a rule made under this
958 chapter, the person shall pay the costs incurred by the division to copy a record required under
959 this chapter, including the costs incurred to copy an electronic record in a universally readable
960 format.

961 (b) If a person fails to pay the costs described in Subsection (8)(a) when due, the
962 person's license or certification is automatically suspended:

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

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

965 Section 9. Section **61-2e-201** is amended to read:

966 **61-2e-201. Registration required -- Qualification for registration.**

967 (1) Unless exempted under Section [61-2e-104](#), an appraisal management company is
968 required to register under this chapter if the company:

969 (a) contracts with one or more appraisers for the performance of 10 or more appraisals
970 in the state in a calendar year; or

971 (b) oversees a network or panel of more than 15 appraisers certified or licensed in the
972 state.

973 (2) Unless registered under this chapter or exempt under Section [61-2e-104](#), an entity

974 may not with regard to a real estate appraisal activity for real estate located in this state:

975 (a) directly or indirectly engage or attempt to engage in business as an appraisal
976 management company;

977 (b) directly or indirectly engage or attempt to perform an appraisal management
978 service; or

979 (c) advertise or hold itself out as engaging in or conducting business as an appraisal
980 management company.

981 (3) To qualify to be registered as an appraisal management company under this
982 chapter:

983 (a) the appraisal management company may not have had a license or registration
984 revoked by a government regulatory body at any time, unless the revocation is subsequently
985 vacated or converted;

986 [~~(a)~~] (b) each individual who owns, directly or indirectly, more than 10% of the
987 appraisal management company shall:

988 (i) be of good moral character, as determined by the board; and

989 (ii) not have had a license or certificate to engage in an act related to a real estate or
990 mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

991 [~~(b)~~] (c) the appraisal management company shall designate a main contact for
992 communication between the appraisal management company and either the board or division
993 who:

994 (i) is a controlling person;

995 (ii) is of good moral character, as determined by the board; and

996 (iii) has not had a license or certificate to engage in an act related to a real estate or
997 mortgage transaction refused, denied, canceled, or revoked in this state or in another state.

998 (4) This section applies without regard to whether the entity uses the term:

999 (a) "appraisal management company";

1000 (b) "mortgage technology company"; or

1001 (c) another name.

1002 Section 10. Section **61-2e-307** is amended to read:

1003 **61-2e-307. Prohibited acts -- Exclusions.**

1004 (1) An appraisal management company required to be registered under this chapter and
1005 a controlling person, employee, or agent of the appraisal management company may not:

1006 (a) engage in an act of coercion, extortion, intimidation, or bribery for any purpose
1007 related to an appraisal;

1008 (b) compensate an appraiser in a manner that the person should reasonably know
1009 would result in the appraiser not conducting a real estate appraisal activity in a manner
1010 consistent with applicable appraisal standards;

1011 (c) engage in the business of an appraisal management company under an assumed or
1012 fictitious name not properly registered in the state;

1013 (d) accept a contingent fee for performing an appraisal management service if the fee is
1014 contingent on:

1015 (i) the appraisal report having a predetermined analysis, opinion, or conclusion;

1016 (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

1017 (iii) the consequences resulting from the appraisal assignment;

1018 (e) require an appraiser to indemnify the appraisal management company against
1019 liability except liability for errors and omissions by the appraiser; [~~or~~]

1020 (f) alter, modify, or otherwise change a completed appraisal report submitted by an
1021 appraiser[~~;~~]; or

1022 (g) engage in any act or practice that violates appraisal independence as defined in 15
1023 U.S.C. Sec. 1639e or in the policies and procedures of:

1024 (i) the Federal Home Loan Mortgage Corporation; or

1025 (ii) the Federal National Mortgage Association.

1026 (2) An appraisal management company required to be registered under this chapter, or
1027 a controlling person, employee, or agent of the appraisal management company may not

- 1028 influence or attempt to influence the development, reporting, or review of an appraisal through:
- 1029 (a) coercion;
 - 1030 (b) extortion;
 - 1031 (c) collusion;
 - 1032 (d) compensation;
 - 1033 (e) instruction;
 - 1034 (f) inducement;
 - 1035 (g) intimidation;
 - 1036 (h) bribery; or
 - 1037 (i) any other manner that would constitute undue influence.
- 1038 (3) A violation of Subsection (2) includes doing one or more of the following for a
- 1039 purpose listed in Subsection (2):
- 1040 (a) withholding or threatening to withhold timely payment for an appraisal;
 - 1041 (b) withholding or threatening to withhold future business for an appraiser;
 - 1042 (c) taking adverse action or threatening to take adverse action against an appraiser
 - 1043 regarding use of the appraiser for a real estate appraisal activity;
 - 1044 (d) expressly or by implication promising future business or increased compensation
 - 1045 for an appraiser;
 - 1046 (e) conditioning one or more of the following on the opinion, conclusion, or valuation
 - 1047 to be reached, or on a preliminary estimate or opinion requested from an appraiser:
 - 1048 (i) a request for a real estate appraisal activity; or
 - 1049 (ii) the payment of consideration; - 1050 (f) requesting that an appraiser provide at any time before the appraiser's completion of
 - 1051 a real estate appraisal activity:
 - 1052 (i) an estimated, predetermined, or desired valuation in an appraisal report; or
 - 1053 (ii) an estimated value or comparable sale;
 - 1054 (g) except for a copy of a sales contract for a purchase transaction, providing to an

1055 appraiser:

1056 (i) an anticipated, estimated, encouraged, or desired value for a subject property; or

1057 (ii) a proposed or target amount to be loaned to the borrower;

1058 (h) providing to an appraiser, or an individual related to the appraiser, stock or other

1059 financial or non-financial benefits;

1060 (i) allowing the removal of an appraiser from an appraiser panel, without prior written

1061 notice to the appraiser as required by Section 61-2e-306;

1062 (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated

1063 valuation model in connection with a mortgage financing transaction unless:

1064 (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet

1065 applicable appraisal standards; and

1066 (B) the reasonable basis is noted in the loan file; or

1067 (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or

1068 post-funding appraisal review or quality control process in accordance with applicable

1069 appraisal standards;

1070 (k) removing or threatening to remove an appraiser from the appraiser panel if an

1071 appraiser requires a reasonable extension of the completion date for an appraisal assignment in

1072 order to complete a credible appraisal report; or

1073 (l) engaging in any other act or practice that impairs or attempts to impair an appraiser's

1074 independence, objectivity, or impartiality.

1075 (4) This section may not be construed to prohibit an appraisal management company

1076 from requesting that an appraiser:

1077 (a) provide additional information about the basis for a valuation; or

1078 (b) correct an objective factual error in an appraisal report.

1079 Section 11. Section **61-2e-401** is amended to read:

1080 **61-2e-401. Division authority -- Immunity.**

1081 (1) (a) In addition to a power or duty expressly provided in this chapter, the division

1082 may:

1083 (i) receive and act on a complaint including:

1084 (A) taking action designed to obtain voluntary compliance with this chapter, including
1085 the issuance of a cease and desist order if the person against whom the order is issued is given
1086 the right to petition the board for review of the order; or

1087 (B) commencing an administrative or judicial proceeding on the division's own
1088 initiative;

1089 (ii) ~~investigate~~ conduct a public or private investigation of an entity required to be
1090 registered under this chapter, regardless of whether the entity is located in Utah;

1091 (iii) employ one or more investigators, clerks, or other employees or agents if:

1092 (A) approved by the executive director; and

1093 (B) within the budget of the division; and

1094 (iv) issue a subpoena that requires:

1095 (A) the attendance and testimony of a witness; or

1096 (B) the production of evidence.

1097 (b) (i) A court of competent jurisdiction shall enforce, according to the practice and
1098 procedure of the court, a subpoena issued by the division.

1099 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
1100 required by the service statutes of the state where the witness or evidence is located.

1101 (c) A failure to respond to a request by the division in an investigation under this
1102 chapter is considered to be a separate violation of this chapter, including:

1103 (i) failing to respond to a subpoena;

1104 (ii) withholding evidence; or

1105 (iii) failing to produce a document or record.

1106 (2) (a) If a person is found to have violated this chapter or a rule made under this
1107 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1108 document, or record required under this chapter, including the costs incurred to copy an

1109 electronic book, paper, contract, document, or record in a universally readable format.

1110 (b) If a person fails to pay the costs described in Subsection (2)(a) when due, the
1111 person's registration is automatically suspended:

1112 (i) beginning the day on which the payment of costs is due; and

1113 (ii) ending the day on which the costs are paid.

1114 (3) The division is immune from a civil action or criminal prosecution for initiating or
1115 assisting in a lawful investigation of an act or participating in a disciplinary proceeding under
1116 this chapter if the division takes the action:

1117 (a) without malicious intent; and

1118 (b) in the reasonable belief that the action is taken pursuant to the powers and duties
1119 vested in the division under this chapter.

1120 Section 12. Section **61-2f-102** is amended to read:

1121 **61-2f-102. Definitions.**

1122 As used in this chapter:

1123 (1) "Associate broker" means an individual who is:

1124 (a) employed or engaged as an independent contractor by or on behalf of a principal
1125 broker to perform an act [~~set out~~] described in Subsection [~~(18)~~] (20) for valuable
1126 consideration; and

1127 (b) licensed under this chapter as an associate broker.

1128 (2) "Branch broker" means an associate broker who manages a principal broker's
1129 branch office under the supervision of the principal broker.

1130 [~~(2)~~] (3) "Branch office" means a principal broker's real estate brokerage office that is
1131 not the principal broker's main office.

1132 [~~(3)~~] (4) "Business day" means a day other than:

1133 (a) a Saturday;

1134 (b) a Sunday; or

1135 (c) a federal or state holiday.

1136 [~~(4)~~] (5) "Business opportunity" means the sale, lease, or exchange of any business that
1137 includes an interest in real estate.

1138 [~~(5)~~] (6) "Commission" means the Real Estate Commission established under this
1139 chapter.

1140 [~~(6)~~] (7) "Concurrence" means the entities given a concurring role must jointly agree
1141 for action to be taken.

1142 [~~(7)~~] (8) "Condominium homeowners' association" means the condominium unit
1143 owners acting as a group in accordance with declarations and bylaws.

1144 [~~(8)~~] (9) (a) "Condominium hotel" means one or more condominium units that are
1145 operated as a hotel.

1146 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all
1147 of which are owned by a single entity.

1148 [~~(9)~~] (10) "Condominium unit" means the same as that term is defined in Section
1149 [57-8-3](#).

1150 [~~(10)~~] (11) "Director" means the director of the Division of Real Estate.

1151 [~~(11)~~] (12) "Division" means the Division of Real Estate.

1152 (13) "Dual broker" means a principal broker of a real estate sales brokerage who
1153 obtains from the division a dual broker license in order to function as the principal broker of a
1154 property management company that is a separate entity from the real estate sales brokerage.

1155 [~~(12)~~] (14) "Entity" means:

1156 (a) a corporation;

1157 (b) a partnership;

1158 (c) a limited liability company;

1159 (d) a company;

1160 (e) an association;

1161 (f) a joint venture;

1162 (g) a business trust;

- 1163 (h) a trust; or
- 1164 (i) any organization similar to an entity described in Subsections [~~(12)~~] (14)(a) through
- 1165 (h).
- 1166 [~~(13)~~] (15) "Executive director" means the director of the Department of Commerce.
- 1167 [~~(14)~~] (16) "Foreclosure rescue" means, for compensation or with the expectation of
- 1168 receiving valuable consideration, to:
- 1169 (a) engage, or offer to engage, in an act that:
- 1170 (i) the person represents will assist a borrower in preventing a foreclosure; and
- 1171 (ii) relates to a transaction involving the transfer of title to residential real property; or
- 1172 (b) as an employee or agent of another person:
- 1173 (i) solicit, or offer that the other person will engage in an act described in Subsection
- 1174 [~~(14)~~] (16)(a); or
- 1175 (ii) negotiate terms in relationship to an act described in Subsection [~~(14)~~] (16)(a).
- 1176 [~~(15)~~] (17) "Loan modification assistance" means, for compensation or with the
- 1177 expectation of receiving valuable consideration, to:
- 1178 (a) act, or offer to act, on behalf of a person to:
- 1179 (i) obtain a loan term of a residential mortgage loan that is different from an existing
- 1180 loan term including:
- 1181 (A) an increase or decrease in an interest rate;
- 1182 (B) a change to the type of interest rate;
- 1183 (C) an increase or decrease in the principal amount of the residential mortgage loan;
- 1184 (D) a change in the number of required period payments;
- 1185 (E) an addition of collateral;
- 1186 (F) a change to, or addition of, a prepayment penalty;
- 1187 (G) an addition of a cosigner; or
- 1188 (H) a change in persons obligated under the existing residential mortgage loan; or
- 1189 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

1190 or

1191 (b) as an employee or agent of another person:

1192 (i) solicit, or offer that the other person will engage in an act described in Subsection
1193 ~~[(15)]~~ (17)(a); or

1194 (ii) negotiate terms in relationship to an act described in Subsection ~~[(15)]~~ (17)(a).

1195 ~~[(16)]~~ (18) "Main office" means the address which a principal broker designates with
1196 the division as the principal broker's primary brokerage office.

1197 ~~[(17)]~~ (19) "Person" means an individual or entity.

1198 ~~[(18)]~~ (20) "Principal broker" means an individual who is licensed or required to be
1199 licensed as a principal broker under this chapter who:

1200 (a) sells or lists for sale real estate, including real estate being sold as part of a
1201 foreclosure rescue, or a business opportunity with the expectation of receiving valuable
1202 consideration;

1203 (b) buys, exchanges, or auctions real estate, an option on real estate, a business
1204 opportunity, or an improvement on real estate with the expectation of receiving valuable
1205 consideration;

1206 (c) advertises, offers, attempts, or otherwise holds the individual out to be engaged in
1207 the business described in Subsection ~~[(18)]~~ (20)(a) or (b);

1208 (d) is employed by or on behalf of the owner of real estate or by a prospective
1209 purchaser of real estate and performs an act described in Subsection ~~[(18)]~~ (20)(a), whether the
1210 individual's compensation is at a stated salary, a commission basis, upon a salary and
1211 commission basis, or otherwise;

1212 (e) with the expectation of receiving valuable consideration, manages property owned
1213 by another person;

1214 (f) advertises or otherwise holds the individual out to be engaged in property
1215 management;

1216 (g) with the expectation of receiving valuable consideration, assists or directs in the

1217 procurement of prospects for or the negotiation of a transaction listed in Subsections [~~(18)~~
1218 (20)(a) and (e);

1219 (h) except for a mortgage lender, title insurance producer, or an employee of a
1220 mortgage lender or title insurance producer, assists or directs in the closing of a real estate
1221 transaction with the expectation of receiving valuable consideration;

1222 (i) engages in foreclosure rescue; or

1223 (j) advertises, offers, attempts, or otherwise holds the person out as being engaged in
1224 foreclosure rescue.

1225 [~~(19)~~] (21) (a) "Property management" means engaging in, with the expectation of
1226 receiving valuable consideration, the management of real estate owned by another person or
1227 advertising or otherwise claiming to be engaged in property management by:

1228 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
1229 participating in a transaction calculated to secure the rental or leasing of real estate;

1230 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
1231 estate and accounting for and disbursing the money collected; or

1232 (iii) authorizing expenditures for repairs to the real estate.

1233 (b) "Property management" does not include:

1234 (i) hotel or motel management;

1235 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
1236 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
1237 similar public accommodations for a period of less than 30 consecutive days, and the
1238 management activities associated with these rentals; or

1239 (iii) the leasing or management of surface or subsurface minerals or oil and gas
1240 interests, if the leasing or management is separate from a sale or lease of the surface estate.

1241 (22) "Property management sales agent" means a sales agent who:

1242 (a) is affiliated with a dual broker through the dual broker's property management
1243 company; and

1244 (b) is designated by the dual broker as a property management sales agent.
1245 [~~(20)~~] (23) "Real estate" includes leaseholds and business opportunities involving real
1246 property.
1247 [~~(21)~~] (24) (a) "Regular salaried employee" means an individual who performs a
1248 service for wages or other remuneration, whose employer withholds federal employment taxes
1249 under a contract of hire, written or oral, express or implied.
1250 (b) "Regular salaried employee" does not include an individual who performs services
1251 on a project-by-project basis or on a commission basis.
1252 [~~(22)~~] (25) "Reinstatement" means restoring a license that has expired or has been
1253 suspended.
1254 [~~(23)~~] (26) "Reissuance" means the process by which a licensee may obtain a license
1255 following revocation of the license.
1256 [~~(24)~~] (27) "Renewal" means extending a license for an additional licensing period on
1257 or before the date the license expires.
1258 [~~(25)~~] (28) "Sales agent" means an individual who is:
1259 (a) affiliated with a principal broker, either as an independent contractor or an
1260 employee as provided in Section [61-2f-303](#), to perform for valuable consideration an act
1261 described in Subsection [~~(18)~~] (20); and
1262 (b) licensed under this chapter as a sales agent.
1263 Section 13. Section **61-2f-202** is amended to read:
1264 **61-2f-202. Exempt persons and transactions.**
1265 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
1266 required for:
1267 (i) [~~an individual~~] a person who as owner or lessor performs an act described in
1268 Subsection [61-2f-102](#)(18) with reference to real estate owned or leased by that [~~individual~~]
1269 person;
1270 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference

1271 to nonresidential real estate owned or leased by the employer, performs an act described in
1272 Subsection 61-2f-102(18)(b) or (c);

1273 (iii) a regular salaried employee of the owner of real estate who performs property
1274 management services with reference to real estate owned by the employer, except that the
1275 employee may only manage real estate for one employer;

1276 (iv) an individual who performs property management services for the apartments at
1277 which that individual resides in exchange for free or reduced rent on that individual's
1278 apartment;

1279 (v) a regular salaried employee of a condominium homeowners' association who
1280 manages real estate subject to the declaration of condominium that established the
1281 condominium homeowners' association, except that the employee may only manage real estate
1282 for one condominium homeowners' association; and

1283 (vi) a regular salaried employee of a licensed property management company or real
1284 estate brokerage who performs support services, as prescribed by rule, for the property
1285 management company or real estate brokerage.

1286 (b) Subsection (1)(a) does not exempt from licensing:

1287 (i) an employee engaged in the sale of real estate regulated under:

1288 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or

1289 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

1290 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
1291 Chapter 23, Real Estate Cooperative Marketing Act; or

1292 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
1293 transferred to that individual for the purpose of evading the application of this chapter, and not
1294 for another legitimate business reason.

1295 (2) A license under this chapter is not required for:

1296 (a) an isolated transaction or service by an individual holding an unsolicited, duly
1297 executed power of attorney from a property owner;

1298 (b) services rendered by an attorney admitted to practice law in this state in performing
1299 the attorney's duties as an attorney;

1300 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
1301 under order of a court;

1302 (d) a trustee or employee of a trustee under a deed of trust or a will;

1303 (e) a public utility, officer of a public utility, or regular salaried employee of a public
1304 utility, unless performance of an act described in Subsection 61-2f-102(18) is in connection
1305 with the sale, purchase, lease, or other disposition of real estate or investment in real estate
1306 unrelated to the principal business activity of that public utility;

1307 (f) a regular salaried employee or authorized agent working under the oversight of the
1308 Department of Transportation when performing an act on behalf of the Department of
1309 Transportation in connection with one or more of the following:

1310 (i) the acquisition of real estate pursuant to Section 72-5-103;

1311 (ii) the disposal of real estate pursuant to Section 72-5-111;

1312 (iii) services that constitute property management; or

1313 (iv) the leasing of real estate; and

1314 (g) a regular salaried employee of a county, city, or town when performing an act on
1315 behalf of the county, city, or town:

1316 (i) in accordance with:

1317 (A) if a regular salaried employee of a city or town:

1318 (I) Title 10, Utah Municipal Code; or

1319 (II) Title 11, Cities, Counties, and Local Taxing Units; and

1320 (B) if a regular salaried employee of a county:

1321 (I) Title 11, Cities, Counties, and Local Taxing Units; and

1322 (II) Title 17, Counties; and

1323 (ii) in connection with one or more of the following:

1324 (A) the acquisition of real estate, including by eminent domain;

1325 (B) the disposal of real estate;

1326 (C) services that constitute property management; or

1327 (D) the leasing of real estate.

1328 (3) A license under this chapter is not required for an individual registered to act as a

1329 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the

1330 sale or the offer for sale of real estate if:

1331 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the

1332 Securities Act of 1933 and the Securities Exchange Act of 1934; and

1333 (ii) the security is registered for sale in accordance with:

1334 (A) the Securities Act of 1933; or

1335 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or

1336 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.

1337 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation

1338 D, Rule 506, 17 C.F.R. Sec. 230.506; and

1339 (ii) the selling agent and the purchaser are not residents of this state.

1340 (4) As used in this section, "owner" does not include:

1341 (a) a person who holds an option to purchase real property;

1342 (b) a mortgagee;

1343 (c) a beneficiary under a deed of trust;

1344 (d) a trustee under a deed of trust; or

1345 (e) a person who owns or holds a claim that encumbers any real property or an

1346 improvement to the real property.

1347 (5) The commission, with the concurrence of the division, may provide, by rule made

1348 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1349 circumstances under which a person or transaction qualifies for an exemption that is described

1350 in this section.

1351 Section 14. Section **61-2f-206** is amended to read:

1352 **61-2f-206. Registration of entity or branch office -- Certification of education**
1353 **providers and courses -- Specialized licenses.**

1354 (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it
1355 is registered with the division.

1356 (b) To register with the division under this Subsection (1), an entity shall submit to the
1357 division:

1358 (i) an application in a form required by the division;

1359 (ii) evidence of an affiliation with a principal broker;

1360 (iii) evidence that the entity is registered and in good standing with the Division of
1361 Corporations and Commercial Code; and

1362 (iv) a registration fee established by the commission with the concurrence of the
1363 division under Section 63J-1-504.

1364 (c) The division may terminate an entity's registration if:

1365 (i) the entity's registration with the Division of Corporations and Commercial Code has
1366 been expired for at least three years; and

1367 (ii) the entity's license with the division has been inactive for at least three years.

1368 (2) (a) A principal broker shall register with the division each of the principal broker's
1369 branch offices.

1370 (b) To register a branch office with the division under this Subsection (2), a principal
1371 broker shall submit to the division:

1372 (i) an application in a form required by the division; and

1373 (ii) a registration fee established by the commission with the concurrence of the
1374 division under Section 63J-1-504.

1375 (3) (a) In accordance with rules made by the commission with the concurrence of the
1376 division, the division shall certify:

1377 (i) a real estate school;

1378 (ii) a course provider; or

1379 (iii) an instructor.

1380 (b) In accordance with rules made by the commission, subject to concurrence by the
1381 division, the division shall certify a continuing education course that is required under this
1382 chapter.

1383 (4) ~~[(a)]~~ Except as provided by rule, a principal broker may not be responsible for more
1384 than one registered entity at the same time.

1385 (5) A principal broker may simultaneously supervise one main office and up to two
1386 additional branch offices.

1387 (6) A branch broker may simultaneously supervise up to three branch offices.

1388 ~~[(b)-(i)]~~ (7) (a) In addition to issuing a principal broker license, associate broker
1389 license, or sales agent license authorizing the performance of an act set forth in Section
1390 [61-2f-201](#), the division may issue a specialized sales license or specialized property
1391 management license with the scope of practice limited to the specialty.

1392 ~~[(ii)]~~ (b) An individual may hold a specialized license in addition to a license as a
1393 principal broker, associate broker, or a sales agent.

1394 (c) A sales agent who is affiliated with a dual broker may act as a property
1395 management sales agent if:

1396 (i) the dual broker designates the sales agent as a property management sales agent; and

1397 (ii) the sales agent pays to the division a property management sales agent designation
1398 fee in an amount determined by the division in accordance with Section [63J-1-504](#).

1399 (d) A property management sales agent may simultaneously provide both property
1400 management services and real estate sales services under the supervision of a dual broker as
1401 provided by the commission with the concurrence of the division by rule made in accordance
1402 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1403 ~~[(iii)]~~ (8) The commission may ~~[adopt rules pursuant to]~~ determine, by rule made in
1404 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to
1405 concurrence by the division, ~~[for the administration of this Subsection (4)]~~ licensing

1406 requirements related to this section for a principal broker, associate broker, sales agent, dual
 1407 broker, property management sales agent, or for a specialized license described in Subsection
 1408 (7), including:

- 1409 ~~[(A)]~~ (a) prelicensing and postlicensing education requirements;
- 1410 ~~[(B)]~~ (b) examination requirements;
- 1411 ~~[(C)]~~ (c) affiliation with real estate brokerages or property management companies;
- 1412 ~~[and]~~
- 1413 (d) property management sales agent:
 - 1414 (i) designation procedures;
 - 1415 (ii) allowable scope of practice; and
 - 1416 (iii) division fees;
- 1417 (e) what constitutes reasonable supervision for:
 - 1418 (i) a principal broker when supervising a branch broker or sales agent; and
 - 1419 (ii) a branch broker when supervising a sales agent; and
- 1420 ~~[(D)]~~ (f) other licensing procedures.

1421 Section 15. Section **61-2f-304** is amended to read:

1422 **61-2f-304. Termination of associate broker or sales agent by principal broker --**
 1423 **Notice.**

1424 (1) If a principal broker terminates an associate broker or sales agent, the principal
 1425 broker shall ~~[by no later than three days from the day on which the principal broker terminates~~
 1426 ~~the associate broker or sales agent.]~~ notify the division and the associate broker or sales agent
 1427 of the termination in a manner prescribed by rule made in accordance with Title 63G, Chapter
 1428 3, Utah Administrative Rulemaking Act, by the commission with the concurrence of the
 1429 division.

- 1430 ~~[(a) provide the division a signed statement notifying the division of the termination;~~
- 1431 ~~and]~~
- 1432 ~~[(b) send to the last-known residence address of that associate broker or sales agent~~

1433 ~~notice that the principal broker has notified the division of the termination of the associate~~
1434 ~~broker or sales agent.]~~

1435 (2) An associate broker or sales agent may not perform any act under this chapter,
1436 directly or indirectly, from and after the effective date [~~of receipt~~] of the termination notice [~~by~~
1437 ~~the division~~] until the day on which the associate broker or sales agent is affiliated with a
1438 principal broker.

1439 Section 16. Section **61-2f-401** is amended to read:

1440 **61-2f-401. Grounds for disciplinary action.**

1441 The following acts are unlawful for a person licensed or required to be licensed under
1442 this chapter:

1443 (1) (a) making a substantial misrepresentation, including in a licensure statement;

1444 (b) making an intentional misrepresentation;

1445 (c) pursuing a continued and flagrant course of misrepresentation;

1446 (d) making a false representation or promise through an agent, sales agent, advertising,
1447 or otherwise; or

1448 (e) making a false representation or promise of a character likely to influence,
1449 persuade, or induce;

1450 (2) acting for more than one party in a transaction without the informed consent of the
1451 parties;

1452 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
1453 broker;

1454 (b) representing or attempting to represent a principal broker other than the principal
1455 broker with whom the person is affiliated; or

1456 (c) representing as sales agent or having a contractual relationship similar to that of
1457 sales agent with a person other than a principal broker;

1458 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
1459 to another and comes into the person's possession;

1460 (b) commingling money described in Subsection (4)(a) with the person's own money;

1461 or

1462 (c) diverting money described in Subsection (4)(a) from the purpose for which the
1463 money is received;

1464 (5) paying or offering to pay valuable consideration, as defined by the commission, to a
1465 person not licensed under this chapter, except that valuable consideration may be shared:

1466 (a) with a principal broker of another jurisdiction; or

1467 (b) as provided under:

1468 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

1469 (ii) Title 16, Chapter 11, Professional Corporation Act; or

1470 (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
1471 appropriate pursuant to Section [48-3a-1405](#);

1472 (6) for a principal broker, paying or offering to pay a sales agent or associate broker
1473 who is not affiliated with the principal broker at the time the sales agent or associate broker
1474 earned the compensation;

1475 (7) being incompetent to act as a principal broker, associate broker, or sales agent in
1476 such manner as to safeguard the interests of the public;

1477 (8) failing to voluntarily furnish a copy of a document to the parties before and after the
1478 execution of a document;

1479 (9) failing to keep and make available for inspection by the division a record of each
1480 transaction, including:

1481 (a) the names of buyers and sellers or lessees and lessors;

1482 (b) the identification of real estate;

1483 (c) the sale or rental price;

1484 (d) money received in trust;

1485 (e) agreements or instructions from buyers and sellers or lessees and lessors; and

1486 (f) any other information required by rule;

- 1487 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
1488 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 1489 (11) being convicted, within five years of the most recent application for licensure, of a
1490 criminal offense involving moral turpitude regardless of whether:
- 1491 (a) the criminal offense is related to real estate; or
1492 (b) the conviction is based upon a plea of nolo contendere;
- 1493 (12) having, within five years of the most recent application for a license under this
1494 chapter, entered any of the following related to a criminal offense involving moral turpitude:
- 1495 (a) a plea in abeyance agreement;
1496 (b) a diversion agreement;
1497 (c) a withheld judgment; or
1498 (d) an agreement in which a charge was held in suspense during a period of time when
1499 the licensee was on probation or was obligated to comply with conditions outlined by a court;
- 1500 (13) advertising the availability of real estate or the services of a licensee in a false,
1501 misleading, or deceptive manner;
- 1502 (14) in the case of a principal broker [~~or a licensee who is a branch manager~~] or a
1503 branch broker, failing to exercise reasonable supervision over the activities of the principal
1504 broker's or branch [~~manager's~~] broker's licensed or unlicensed staff;
- 1505 (15) violating or disregarding:
- 1506 (a) this chapter;
1507 (b) an order of the commission; or
1508 (c) the rules adopted by the commission and the division;
- 1509 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
1510 estate transaction;
- 1511 (17) any other conduct which constitutes dishonest dealing;
1512 (18) unprofessional conduct as defined by statute or rule;
1513 (19) having one of the following suspended, revoked, surrendered, or cancelled on the

1514 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
1515 truthfulness:

1516 (a) a real estate license, registration, or certificate issued by another jurisdiction; or

1517 (b) another license, registration, or certificate to engage in an occupation or profession
1518 issued by this state or another jurisdiction;

1519 (20) failing to respond to a request by the division in an investigation authorized under
1520 this chapter, including:

1521 (a) failing to respond to a subpoena;

1522 (b) withholding evidence; or

1523 (c) failing to produce documents or records;

1524 (21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1525 (a) providing a title insurance product or service without the approval required by
1526 Section 31A-2-405; or

1527 (b) knowingly providing false or misleading information in the statement required by
1528 Subsection 31A-2-405(2);

1529 (22) violating an independent contractor agreement between a principal broker and a
1530 sales agent or associate broker as evidenced by a final judgment of a court;

1531 (23) (a) engaging in an act of loan modification assistance that requires licensure as a
1532 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act,
1533 without being licensed under that chapter;

1534 (b) engaging in an act of foreclosure rescue without entering into a written agreement
1535 specifying what one or more acts of foreclosure rescue will be completed;

1536 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an
1537 act of foreclosure rescue by:

1538 (i) suggesting to the person that the licensee has a special relationship with the person's
1539 lender or loan servicer; or

1540 (ii) falsely representing or advertising that the licensee is acting on behalf of:

- 1541 (A) a government agency;
- 1542 (B) the person's lender or loan servicer; or
- 1543 (C) a nonprofit or charitable institution; or
- 1544 (d) recommending or participating in a foreclosure rescue that requires a person to:
- 1545 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
- 1546 has a business relationship or financial interest;
- 1547 (ii) make a mortgage payment to a person other than the person's loan servicer; or
- 1548 (iii) refrain from contacting the person's:
- 1549 (A) lender;
- 1550 (B) loan servicer;
- 1551 (C) attorney;
- 1552 (D) credit counselor; or
- 1553 (E) housing counselor;
- 1554 (24) as a principal broker, placing a lien on real property, unless authorized by law; or
- 1555 (25) as a sales agent or associate broker, placing a lien on real property for an unpaid
- 1556 commission or other compensation related to real estate brokerage services.

1557 Section 17. Section **61-2f-402** is amended to read:

1558 **61-2f-402. Investigations.**

1559 (1) The division may ~~make an~~ conduct a public or private investigation within or

1560 outside of this state as the division considers necessary to determine whether a person has

1561 violated, is violating, or is about to violate this chapter or any rule or order under this chapter.

1562 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms

1563 under this chapter, the division may require or permit a person to file a statement in writing,

1564 under oath or otherwise as to the facts and circumstances concerning the matter to be

1565 investigated.

1566 (3) For the purpose of the investigation described in Subsection (1), the division or an

1567 employee designated by the division may:

- 1568 (a) administer an oath or affirmation;
- 1569 (b) issue a subpoena that requires:
 - 1570 (i) the attendance and testimony of a witness; or
 - 1571 (ii) the production of evidence;
- 1572 (c) take evidence;
- 1573 (d) require the production of a book, paper, contract, record, other document, or
- 1574 information relevant to the investigation; and
- 1575 (e) serve a subpoena by certified mail.
- 1576 (4) (a) A court of competent jurisdiction shall enforce, according to the practice and
- 1577 procedure of the court, a subpoena issued by the division.
- 1578 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee
- 1579 required by the service statutes of the state where the witness or evidence is located.
- 1580 (5) (a) If a person is found to have violated this chapter or a rule made under this
- 1581 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
- 1582 document, or record required under this chapter, including the costs incurred to copy an
- 1583 electronic book, paper, contract, document, or record in a universally readable format.
- 1584 (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the
- 1585 person's license, certification, or registration is automatically suspended:
 - 1586 (i) beginning the day on which the payment of costs is due; and
 - 1587 (ii) ending the day on which the costs are paid.
- 1588 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a
- 1589 disciplinary action under this chapter no later than the earlier of the following:
 - 1590 (i) four years after the day on which the violation is reported to the division; or
 - 1591 (ii) 10 years after the day on which the violation occurred.
- 1592 (b) The division may commence a disciplinary action under this chapter after the time
- 1593 period described in Subsection (6)(a) expires if:
 - 1594 (i) (A) the disciplinary action is in response to a civil or criminal judgment or

1595 settlement; and

1596 (B) the division initiates the disciplinary action no later than one year after the day on
1597 which the judgment is issued or the settlement is final; or

1598 (ii) the division and the person subject to a disciplinary action enter into a written
1599 stipulation to extend the time period described in Subsection (6)(a).

1600 Section 18. Section **61-2f-403** is amended to read:

1601 **61-2f-403. Mishandling of trust money.**

1602 (1) The division may audit principal brokers' trust accounts or other accounts in which
1603 a licensee maintains trust money under this chapter. If the division's audit shows, in the
1604 opinion of the division, gross mismanagement, commingling, or misuse of money, the division,
1605 with the concurrence of the commission, may order at the division's expense a complete audit
1606 of the account by a certified public accountant [~~at the licensee's expense~~], or take other action
1607 in accordance with Section [61-2f-404](#).

1608 (2) If the commission finds under Subsection (1) that gross mismanagement,
1609 commingling, or misuse of money occurred, the commission, with concurrence of the division,
1610 may then order the licensee to reimburse the division for the cost of the audit described in
1611 Subsection (1).

1612 [~~(2)~~] (3) The licensee may obtain agency review by the executive director or judicial
1613 review of any division order.

1614 [~~(3)~~] (4) (a) If it appears that a person has grossly mismanaged, commingled, or
1615 otherwise misused trust money, the division, with or without prior administrative proceedings,
1616 may bring an action:

1617 (i) in the district court of the district where:

1618 (A) the person resides;

1619 (B) the person maintains a place of business; or

1620 (C) the act or practice occurred or is about to occur; and

1621 (ii) to enjoin the act or practice and to enforce compliance with this chapter or any rule

1622 or order under this chapter.

1623 (b) Upon a proper showing, a court shall grant injunctive relief or a temporary
1624 restraining order, and may appoint a receiver or conservator. The division is not required to
1625 post a bond in any court proceeding.

1626 Section 19. Section **61-2g-305** is amended to read:

1627 **61-2g-305. Expiration of license, certification, or registration.**

1628 (1) An initial license, certification, or registration issued under this chapter expires on
1629 the expiration date indicated on the license, certificate, or registration.

1630 (2) A renewal license, certification, or registration issued under this chapter expires
1631 two years from the date of issuance.

1632 (3) (a) The scheduled expiration date of a license, certification, or registration shall
1633 appear on the license, certification, or registration document.

1634 (b) (i) The division shall, at the division's discretion, mail or email a holder of a
1635 license, certification, or registration notice of its expiration to the last mailing or email address
1636 stated on the division's records as the holder's current mailing or email address.

1637 (ii) To be mailed or emailed a notice under this Subsection (3)(b), a holder of a license,
1638 certification, or registration shall provide to the division in writing the holder's current mailing
1639 or email address.

1640 (iii) A holder's license, certification, or registration expires if not renewed by the holder
1641 notwithstanding whether the holder receives a notice of its expiration by the division under this
1642 Subsection (3)(b).

1643 Section 20. Section **61-2g-501** is amended to read:

1644 **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

1645 (1) (a) The division may [~~investigate~~] conduct a public or private investigation of the
1646 actions of:

1647 (i) a person registered, licensed, or certified under this chapter;

1648 (ii) an applicant for registration, licensure, or certification;

- 1649 (iii) an applicant for renewal of registration, licensure, or certification; or
- 1650 (iv) a person required to be registered, licensed, or certified under this chapter.
- 1651 (b) The division may initiate an agency action against a person described in Subsection
- 1652 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:
 - 1653 (i) impose disciplinary action;
 - 1654 (ii) deny issuance to an applicant of:
 - 1655 (A) an original registration, license, or certification; or
 - 1656 (B) a renewal of a registration, license, or certification; or
 - 1657 (iii) issue a cease and desist order as provided in Subsection (3).
- 1658 (2) (a) The division may:
 - 1659 (i) administer an oath or affirmation;
 - 1660 (ii) issue a subpoena that requires:
 - 1661 (A) the attendance and testimony of a witness; or
 - 1662 (B) the production of evidence;
 - 1663 (iii) take evidence; and
 - 1664 (iv) require the production of a book, paper, contract, record, document, information,
 - 1665 or evidence relevant to the investigation described in Subsection (1).
- 1666 (b) The division may serve a subpoena by certified mail.
- 1667 (c) A failure to respond to a request by the division in an investigation authorized
- 1668 under this chapter is considered to be a separate violation of this chapter, including:
 - 1669 (i) failing to respond to a subpoena as a witness;
 - 1670 (ii) withholding evidence; or
 - 1671 (iii) failing to produce a book, paper, contract, document, information, or record.
- 1672 (d) (i) A court of competent jurisdiction shall enforce, according to the practice and
- 1673 procedure of the court, a subpoena issued by the division.
- 1674 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
- 1675 required by the service statutes of the state where the witness or evidence is located.

1676 (e) (i) If a person is found to have violated this chapter or a rule made under this
1677 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1678 document, information, or record required under this chapter, including the costs incurred to
1679 copy an electronic book, paper, contract, document, information, or record in a universally
1680 readable format.

1681 (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the
1682 person's license, certification, or registration is automatically suspended:

1683 (A) beginning the day on which the payment of costs is due; and

1684 (B) ending the day on which the costs are paid.

1685 (3) (a) The director shall issue and serve upon a person an order directing that person to
1686 cease and desist from an act if:

1687 (i) the director has reason to believe that the person has been engaging, is about to
1688 engage, or is engaging in the act constituting a violation of this chapter; and

1689 (ii) it appears to the director that it would be in the public interest to stop the act.

1690 (b) Within 10 days after receiving the order, the person upon whom the order is served
1691 may request a hearing.

1692 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
1693 remain in effect.

1694 (d) If a request for hearing is made, the division shall follow the procedures and
1695 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

1696 (4) (a) After a hearing requested under Subsection (3), if the board and division concur
1697 that an act of the person violates this chapter, the board, with the concurrence of the division:

1698 (i) shall issue an order making the cease and desist order permanent; and

1699 (ii) may impose another disciplinary action under Section [61-2g-502](#).

1700 (b) The director shall commence an action in the name of the Department of
1701 Commerce and Division of Real Estate, in the district court in the county in which an act
1702 described in Subsection (3) occurs or where the individual resides or carries on business, to

1703 enjoin and restrain the individual from violating this chapter if:

1704 (i) (A) a hearing is not requested under Subsection (3); and

1705 (B) the individual fails to cease the act described in Subsection (3); or

1706 (ii) after discontinuing the act described in Subsection (3), the individual again

1707 commences the act.

1708 (5) A remedy or action provided in this section does not limit, interfere with, or prevent

1709 the prosecution of another remedy or action, including a criminal proceeding.

1710 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a

1711 disciplinary action under this chapter no later than the earlier of the following:

1712 (i) four years after the day on which the violation is reported to the division; or

1713 (ii) 10 years after the day on which the violation occurred.

1714 (b) The division may commence a disciplinary action under this chapter after the time

1715 period described in Subsection (6)(a) expires if:

1716 (i) (A) the disciplinary action is in response to a civil or criminal judgment or

1717 settlement; and

1718 (B) the division initiates the disciplinary action no later than one year after the day on

1719 which the judgment is issued or the settlement is final; or

1720 (ii) the division and the individual subject to a disciplinary action enter into a written

1721 stipulation to extend the time period described in Subsection (6)(a).