

REAL ESTATE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the scope of the business of residential mortgage loans;
- ▶ establishes a procedure for the voluntary surrender of a license issued under Title

61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; Title 61, Chapter 2f, Real Estate Licensing and Practices Act; and Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act;

- ▶ requires certain state agencies to obtain the concurrence of the Real Estate Commission before the agency makes a rule that changes the rights, duties, or obligations of buyers, sellers, or persons licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, in relation to a real estate transaction between private parties;

- ▶ clarifies the procedure for renewal of an expired license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;

- ▶ provides that the division may send a license issued under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, by mail or by email;

- ▶ clarifies the circumstances under which a buyer's principal broker may directly



- 28 contact a seller who is represented by a principal broker;
- 29 ▶ provides a statute of limitations for a disciplinary action under Title 61, Chapter 2f,
30 Real Estate Licensing and Practices Act;
- 31 ▶ clarifies the effect of the expiration, revocation, or suspension of a license issued
32 under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
- 33 ▶ provides that the education and experience requirements for a licensee under Title
34 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, must meet or
35 exceed the requirements established by the Appraisal Qualification Board;
- 36 ▶ provides that the Real Estate Appraiser Licensing and Certification Board may
37 delegate certain duties to the Division of Real Estate;
- 38 ▶ establishes procedures to request the review of certain decisions relating to
39 licensure, certification, and registration under Title 61, Chapter 2g, Real Estate
40 Appraiser Licensing and Certification Act;
- 41 ▶ broadens the applicability of the background check requirements described in Title
42 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act;
- 43 ▶ clarifies the standards for reciprocal licensure under Title 61, Chapter 2g, Real
44 Estate Appraiser Licensing and Certification Act; and
- 45 ▶ makes technical and conforming changes.

46 **Money Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **61-2c-102**, as last amended by Laws of Utah 2012, Chapter 166

53 **61-2f-103**, as last amended by Laws of Utah 2010, Chapter 286 and renumbered and
54 amended by Laws of Utah 2010, Chapter 379

55 **61-2f-204**, as last amended by Laws of Utah 2013, Chapter 292

56 **61-2f-205**, as renumbered and amended by Laws of Utah 2010, Chapter 379

57 **61-2f-308**, as renumbered and amended by Laws of Utah 2010, Chapter 379

58 **61-2f-402**, as renumbered and amended by Laws of Utah 2010, Chapter 379

- 59 **61-2f-406**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 60 **61-2g-102**, as last amended by Laws of Utah 2012, Chapter 166
- 61 **61-2g-205**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 62 **61-2g-302**, as enacted by Laws of Utah 2011, Chapter 289
- 63 **61-2g-310**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 64 **61-2g-311**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 65 **61-2g-312**, as last amended by Laws of Utah 2012, Chapter 166
- 66 **61-2g-313**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 67 **61-2g-314**, as renumbered and amended by Laws of Utah 2011, Chapter 289

68 ENACTS:

- 69 **61-2c-210**, Utah Code Annotated 1953
- 70 **61-2f-208**, Utah Code Annotated 1953
- 71 **61-2f-410**, Utah Code Annotated 1953
- 72 **61-2g-304.5**, Utah Code Annotated 1953
- 73 **61-2g-316**, Utah Code Annotated 1953



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

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

77 **61-2c-102. Definitions.**

78 (1) As used in this chapter:

79 (a) "Affiliation" means that a mortgage loan originator is associated with a principal
80 lending manager in accordance with Section **61-2c-209**.

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

82 (c) "Approved examination provider" means a person approved by the nationwide
83 database as an approved test provider.

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

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

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

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

89 (i) licensed as a lending manager; and

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

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

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

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

97 (iii) that operates under:

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

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

100 (g) "Business day" means a day other than:

101 (i) a Saturday;

102 (ii) a Sunday; or

103 (iii) a federal or state holiday.

104 (h) (i) "Business of residential mortgage loans" means for compensation or in the
105 expectation of compensation to:

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

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

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

109 (D) unless excluded under Subsection (1)(h)(ii), render services related to the

110 origination of a residential mortgage loan including:

111 (I) preparing a loan package;

112 (II) communicating with the borrower or lender;

113 (III) advising on a loan term; [or]

114 (IV) acting as a loan processor without being employed by a licensed entity; or

115 (V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter;

116 or

117 (E) engage in loan modification assistance.

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

119 (A) if working as an employee under the direction of and subject to the supervision and
120 instruction of a person licensed under this chapter, the performance of a clerical or support duty

121 ~~[such as]~~, including:

122 (I) the receipt, collection, or distribution of information common for the processing or
123 underwriting of a loan in the mortgage industry other than taking an application;

124 (II) communicating with a consumer to obtain information necessary for the processing
125 or underwriting of a residential mortgage loan;

126 (III) word processing;

127 (IV) sending correspondence;

128 (V) assembling files; or

129 (VI) acting as a loan processor;

130 (B) acting as a loan underwriter under the direction and control of an employer

131 licensed under this chapter;

132 (C) acting as a loan underwriter, as an employee of a depository institution, exclusively

133 in the capacity of the depository institution's employee;

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

136 ~~[(C)]~~ (E) except if an individual will engage in an activity as a mortgage loan

137 originator, acting in one or more of the following capacities:

138 (I) a loan wholesaler;

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

140 (III) a loan underwriter;

141 (IV) a loan closer; or

142 (V) funding a loan; or

143 ~~[(D)]~~ (F) if employed by a person who owns or services an existing residential

144 mortgage loan, the direct negotiation with the borrower for the purpose of loan modification.

145 (i) "Certified education provider" means a person who is certified under Section

146 [61-2c-204.1](#) to provide one or more of the following:

147 (i) Utah-specific prelicensing education; or

148 (ii) Utah-specific continuing education.

149 (j) "Closed-end" means a loan:

150 (i) with a fixed amount borrowed; and

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

152 (k) "Commission" means the Residential Mortgage Regulatory Commission created in
153 Section 61-2c-104.

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

- 156 (i) services;
- 157 (ii) personal or real property; or
- 158 (iii) another thing of value.

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

161 (n) "Continuing education" means education taken by an individual licensed under this
162 chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and
163 61-2c-205 to renew a license under this chapter.

164 (o) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or
165 indirectly:

- 166 (i) direct or exercise a controlling interest over:
 - 167 (A) the management or policies of an entity; or
 - 168 (B) the election of a majority of the directors, officers, managers, or managing partners
169 of an entity;
- 170 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
- 171 (iii) vote more than 5% of a class of voting securities of an entity by another entity.

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

174 (ii) "Control person" may include one of the following who is identified as provided in
175 Subsection (1)(p)(i):

- 176 (A) a manager;
- 177 (B) a managing partner;
- 178 (C) a director;
- 179 (D) an executive officer; or
- 180 (E) an individual who performs a function similar to an individual listed in this
181 Subsection (1)(p)(ii).

182 (q) "Depository institution" is as defined in Section 7-1-103.

- 183 (r) "Director" means the director of the division.
- 184 (s) "Division" means the Division of Real Estate.
- 185 (t) "Dwelling" means a residential structure attached to real property that contains one
- 186 to four units including any of the following if used as a residence:
 - 187 (i) a condominium unit;
 - 188 (ii) a cooperative unit;
 - 189 (iii) a manufactured home; or
 - 190 (iv) a house.
- 191 (u) "Employee":
 - 192 (i) means an individual:
 - 193 (A) whose manner and means of work performance are subject to the right of control
 - 194 of, or are controlled by, another person; and
 - 195 (B) whose compensation for federal income tax purposes is reported, or is required to
 - 196 be reported, on a W-2 form issued by the controlling person; and
 - 197 (ii) does not include an independent contractor who performs duties other than at the
 - 198 direction of, and subject to the supervision and instruction of, another person.
 - 199 (v) "Entity" means:
 - 200 (i) a corporation;
 - 201 (ii) a limited liability company;
 - 202 (iii) a partnership;
 - 203 (iv) a company;
 - 204 (v) an association;
 - 205 (vi) a joint venture;
 - 206 (vii) a business trust;
 - 207 (viii) a trust; or
 - 208 (ix) another organization.
 - 209 (w) "Executive director" means the executive director of the Department of Commerce.
 - 210 (x) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage
 - 211 Licensing, 12 U.S.C. Sec. 5101 et seq.
 - 212 (y) "Foreclosure rescue" means, for compensation or with the expectation of receiving
 - 213 valuable consideration, to:

- 214 (i) engage, or offer to engage, in an act that:
- 215 (A) the person represents will assist a borrower in preventing a foreclosure; and
- 216 (B) relates to a transaction involving the transfer of title to residential real property; or
- 217 (ii) as an employee or agent of another person:
- 218 (A) solicit, or offer that the other person will engage in an act described in Subsection
- 219 (1)(y)(i); or
- 220 (B) negotiate terms in relationship to an act described in Subsection (1)(y)(i).
- 221 (z) "Inactive status" means a dormant status into which an unexpired license is placed
- 222 when the holder of the license is not currently engaging in the business of residential mortgage
- 223 loans.
- 224 (aa) "Lending manager" means an individual licensed as a lending manager under
- 225 Section 61-2c-206 to transact the business of residential mortgage loans.
- 226 (bb) "Licensee" means a person licensed with the division under this chapter.
- 227 (cc) "Licensing examination" means the examination required by Section 61-2c-204.1
- 228 or 61-2c-206 for an individual to obtain a license under this chapter.
- 229 (dd) "Loan modification assistance" means, for compensation or with the expectation
- 230 of receiving valuable consideration, to:
- 231 (i) act, or offer to act, on behalf of a person to:
- 232 (A) obtain a loan term of a residential mortgage loan that is different from an existing
- 233 loan term including:
- 234 (I) an increase or decrease in an interest rate;
- 235 (II) a change to the type of interest rate;
- 236 (III) an increase or decrease in the principal amount of the residential mortgage loan;
- 237 (IV) a change in the number of required period payments;
- 238 (V) an addition of collateral;
- 239 (VI) a change to, or addition of, a prepayment penalty;
- 240 (VII) an addition of a cosigner; or
- 241 (VIII) a change in persons obligated under the existing residential mortgage loan; or
- 242 (B) substitute a new residential mortgage loan for an existing residential mortgage
- 243 loan; or
- 244 (ii) as an employee or agent of another person:

245 (A) solicit, or offer that the other person will engage in an act described in Subsection
246 (1)(dd)(i); or

247 (B) negotiate terms in relationship to an act described in Subsection (1)(dd)(i).

248 (ee) (i) Except as provided in Subsection (1)(ee)(ii), "mortgage loan originator" means
249 an individual who for compensation or in expectation of compensation:

250 (A) (I) takes a residential mortgage loan application; or

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

252 (Aa) a purchase;

253 (Bb) a refinance;

254 (Cc) a loan modification assistance; or

255 (Dd) a foreclosure rescue; and

256 (B) is licensed as a mortgage loan originator in accordance with this chapter.

257 (ii) "Mortgage loan originator" does not include a person who:

258 (A) is described in Subsection (1)(ee)(i), but who performs exclusively administrative
259 or clerical tasks as described in Subsection (1)(h)(ii)(A);

260 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

261 (II) performs only real estate brokerage activities; and

262 (III) receives no compensation from:

263 (Aa) a lender;

264 (Bb) a lending manager; or

265 (Cc) an agent of a lender or lending manager; or

266 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
267 11 U.S.C. Sec. 101(53D).

268 (ff) "Nationwide database" means the Nationwide Mortgage Licensing System and
269 Registry, authorized under federal licensing requirements.

270 (gg) "Nontraditional mortgage product" means a mortgage product other than a 30-year
271 fixed rate mortgage.

272 (hh) "Person" means an individual or entity.

273 (ii) "Prelicensing education" means education taken by an individual seeking to be
274 licensed under this chapter in order to meet the education requirements imposed by Section
275 [61-2c-204.1](#) or [61-2c-206](#) for an individual to obtain a license under this chapter.

- 276 (jj) "Principal lending manager" means an individual:
- 277 (i) licensed as a lending manager under Section 61-2c-206; and
- 278 (ii) identified in the nationwide database by the individual's sponsoring entity as the
- 279 entity's principal lending manager.
- 280 (kk) "Record" means information that is:
- 281 (i) prepared, owned, received, or retained by a person; and
- 282 (ii) (A) inscribed on a tangible medium; or
- 283 (B) (I) stored in an electronic or other medium; and
- 284 (II) in a perceivable and reproducible form.
- 285 (ll) "Referral fee":
- 286 (i) means any fee, kickback, or thing of value tendered for a referral of business or a
- 287 service incident to or part of a residential mortgage loan transaction; and
- 288 (ii) does not mean a payment made:
- 289 (A) by a licensed entity to an individual employed by the entity;
- 290 (B) under a contractual incentive program; and
- 291 (C) according to rules made by the division in accordance with Title 63G, Chapter 3,
- 292 Utah Administrative Rulemaking Act.
- 293 (mm) "Residential mortgage loan" means an extension of credit, if:
- 294 (i) the loan or extension of credit is secured by a:
- 295 (A) mortgage;
- 296 (B) deed of trust; or
- 297 (C) consensual security interest;
- 298 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
- 299 (1)(mm)(i):
- 300 (A) is on a dwelling located in the state; and
- 301 (B) is created with the consent of the owner of the residential real property; and
- 302 (iii) solely for the purposes of defining "mortgage loan originator," the extension of
- 303 credit is primarily for personal, family, or household use.
- 304 (nn) "Sponsorship" means an association in accordance with Section 61-2c-209
- 305 between an individual licensed under this chapter and an entity licensed under this chapter.
- 306 (oo) "State" means:

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

308 (ii) the District of Columbia; or

309 (iii) the Commonwealth of Puerto Rico.

310 (pp) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

311 (qq) "Utah-specific" means an educational or examination requirement under this
312 chapter that relates specifically to Utah.

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

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

318 Section 2. Section **61-2c-210** is enacted to read:

319 **61-2c-210. Surrender of license.**

320 (1) The division may, by written agreement, accept the voluntary surrender of a license
321 issued under this chapter.

322 (2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):

323 (a) does not prevent the division from pursuing additional action, including
324 disciplinary action, that relates to the surrendered license and is authorized by this chapter or by
325 rules made under this chapter; and

326 (b) terminates all rights and privileges associated with the license.

327 (3) A person may restore the rights and privileges described in Subsection (2)(b) only if
328 the person reapplies for, and is granted, licensure in accordance with the requirements
329 described in this chapter.

330 (4) Any documentation relating to the tender and acceptance of a voluntary surrender is
331 a public record.

332 Section 3. Section **61-2f-103** is amended to read:

333 **61-2f-103. Real Estate Commission.**

334 (1) There is created within the division a Real Estate Commission. The commission
335 shall:

336 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
337 make rules for the administration of this chapter that are not inconsistent with this chapter,

- 338 including:
- 339 (i) licensing of:
 - 340 (A) a principal broker;
 - 341 (B) an associate broker; and
 - 342 (C) a sales agent;
 - 343 (ii) registration of:
 - 344 (A) an entity; and
 - 345 (B) a branch office;
 - 346 (iii) prelicensing and postlicensing education curricula;
 - 347 (iv) examination procedures;
 - 348 (v) the certification and conduct of:
 - 349 (A) a real estate school;
 - 350 (B) a course provider; or
 - 351 (C) an instructor;
 - 352 (vi) proper handling of money received by a licensee under this chapter;
 - 353 (vii) brokerage office procedures and recordkeeping requirements;
 - 354 (viii) property management;
 - 355 (ix) standards of conduct for a licensee under this chapter;
 - 356 (x) a rule made under Section [61-2f-307](#) regarding an undivided fractionalized
 - 357 long-term estate; and
 - 358 (xi) if the commission determines necessary, a rule as provided in Subsection
 - 359 [61-2f-306\(3\)](#) regarding a legal form;
 - 360 (b) establish, with the concurrence of the division, a fee provided for in this chapter,
 - 361 except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;
 - 362 (c) conduct an administrative hearing not delegated by the commission to an
 - 363 administrative law judge or the division relating to the:
 - 364 (i) licensing of an applicant;
 - 365 (ii) conduct of a licensee;
 - 366 (iii) the certification or conduct of a real estate school, course provider, or instructor
 - 367 regulated under this chapter; or
 - 368 (iv) violation of this chapter by any person;

369 (d) with the concurrence of the director, impose a sanction as provided in Section
370 61-2f-404;

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

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

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

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

376 (2) (a) Except as provided in Subsection (2)(b), a state entity may not, without the
377 concurrence of the commission, make a rule that changes the rights, duties, or obligations of
378 buyers, sellers, or persons licensed under this chapter in relation to a real estate transaction
379 between private parties.

380 (b) Subsection (2)(a) does not apply to a rule made:

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

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

384 [~~2~~] (3) (a) The commission shall be comprised of five members appointed by the
385 governor and approved by the Senate.

386 (b) Four of the commission members shall:

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

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

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

390 (d) The governor may not appoint a commission member described in Subsection [~~2~~]
391 (3)(b) who, at the time of appointment, resides in the same county in the state as another
392 commission member.

393 (e) At least one commission member described in Subsection [~~2~~] (3)(b) shall at the
394 time of an appointment reside in a county that is not a county of the first or second class.

395 [~~3~~] (4) (a) Except as required by Subsection [~~3~~] (4)(b), as terms of current
396 commission members expire, the governor shall appoint each new member or reappointed
397 member to a four-year term ending June 30.

398 (b) Notwithstanding the requirements of Subsection [~~3~~] (4)(a), the governor shall, at
399 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of

400 commission members are staggered so that approximately half of the commission is appointed
401 every two years.

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

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

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

406 [~~4~~] (5) When a vacancy occurs in the membership for any reason, the governor, with
407 the consent of the Senate, shall appoint a replacement for the unexpired term.

408 [~~5~~] (6) A member may not receive compensation or benefits for the member's service,
409 but may receive per diem and travel expenses in accordance with:

410 (a) Section 63A-3-106;

411 (b) Section 63A-3-107; and

412 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
413 63A-3-107.

414 [~~6~~] (7) (a) The commission shall meet at least monthly.

415 (b) The director may call additional meetings:

416 (i) at the director's discretion;

417 (ii) upon the request of the chair; or

418 (iii) upon the written request of three or more commission members.

419 [~~7~~] (8) Three members of the commission constitute a quorum for the transaction of
420 business.

421 Section 4. Section 61-2f-204 is amended to read:

422 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

423 (1) (a) Upon filing an application for an examination for a license under this chapter,
424 the applicant shall pay a nonrefundable fee established in accordance with Section 63J-1-504
425 for admission to the examination.

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

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

- 431 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):
- 432 (A) a new sales agent applicant;
- 433 (B) a principal broker applicant; or
- 434 (C) an associate broker applicant.
- 435 (ii) An applicant described in this Subsection (1)(d) shall:
- 436 (A) submit fingerprint cards in a form acceptable to the division at the time the license
- 437 application is filed; and
- 438 (B) consent to a criminal background check by the Utah Bureau of Criminal
- 439 Identification and the Federal Bureau of Investigation regarding the application.
- 440 (iii) The division shall request the Department of Public Safety to complete a Federal
- 441 Bureau of Investigation criminal background check for each applicant described in this
- 442 Subsection (1)(d) through the national criminal history system or any successor system.
- 443 (iv) The applicant shall pay the cost of the criminal background check and the
- 444 fingerprinting.
- 445 (v) Money paid to the division by an applicant for the cost of the criminal background
- 446 check is nonlapsing.
- 447 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of
- 448 the criminal background check.
- 449 (ii) A license is immediately and automatically revoked if the criminal background
- 450 check discloses the applicant fails to accurately disclose a criminal history involving:
- 451 (A) the real estate industry; or
- 452 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
- 453 deceit.
- 454 (iii) If a criminal background check discloses that an applicant fails to accurately
- 455 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:
- 456 (A) shall review the application; and
- 457 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,
- 458 Utah Administrative Rulemaking Act, may:
- 459 (I) place a condition on a license;
- 460 (II) place a restriction on a license;
- 461 (III) revoke a license; or

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

463 (iv) A person whose conditional license is automatically revoked under Subsection
464 (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii)
465 may have a hearing after the action is taken to challenge the action. The hearing shall be
466 conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

467 (v) The director shall designate one of the following to act as the presiding officer in a
468 hearing described in Subsection (1)(e)(iv):

469 (A) the division; or

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

471 (vi) The decision on whether relief from an action under this Subsection (1)(e) will be
472 granted shall be made by the presiding officer.

473 (vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted
474 only if:

475 (A) the criminal history upon which the division based the revocation:

476 (I) did not occur; or

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

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

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

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

482 (viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after
483 a hearing, the individual may not apply for a new license until at least 12 months after the day
484 on which the license is revoked.

485 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

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

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

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

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

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

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

501 (A) military service; or

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

506 (b) For a period of 30 days after ~~[the expiration date of]~~ the day on which a license
507 expires, the license may be reinstated ~~[upon]~~:

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

511 (ii) if the applicant's license was active on the day on which the applicant's license
512 expired, upon ~~(f)~~ payment of a renewal fee and a late fee determined by the commission with
513 the concurrence of the division under Section 63J-1-504~~;~~, and ~~(f)~~ providing proof
514 acceptable to the division and the commission of the licensee having:

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

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

517 (c) After the 30-day period described in Subsection (2)(b), and until six months after
518 the ~~[expiration date]~~ day on which an active or inactive license expires, the license may be
519 reinstated by:

520 (i) paying a renewal fee and a late fee determined by the commission with the
521 concurrence of the division under Section 63J-1-504;

522 (ii) providing to the division proof of satisfactory completion of six hours of continuing
523 education:

524 (A) in addition to the requirements for a timely renewal; and
525 (B) on a subject determined by the commission by rule made in accordance with Title
526 63G, Chapter 3, Utah Administrative Rulemaking Act; and

527 (iii) providing proof acceptable to the division and the commission of the licensee
528 having:

529 (A) completed the hours of education required under Subsection (2)(a); or

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

531 (d) After the six-month period described in Subsection (2)(c), and until one year after
532 the [~~expiration date~~] day on which an active or inactive license expires, the license may be
533 reinstated by:

534 (i) paying a renewal fee and a late fee determined by the commission with the
535 concurrence of the division under Section 63J-1-504;

536 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing
537 education:

538 (A) in addition to the requirements for a timely renewal; and

539 (B) on a subject determined by the commission by rule made in accordance with Title
540 63G, Chapter 3, Utah Administrative Rulemaking Act; and

541 (iii) providing proof acceptable to the division and the commission of the licensee
542 having:

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

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

545 (e) The division shall relicense a person who does not renew that person's license
546 within one year as prescribed for an original application.

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

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

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

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

554 (3) (a) As a condition for the activation of an inactive license that was in an inactive

555 status at the time of the licensee's most recent renewal, the licensee shall supply the division
556 with proof of:

557 (i) successful completion of the respective sales agent or principal broker licensing
558 examination within six months before applying to activate the license; or

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

562 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah

563 Administrative Rulemaking Act, establish by rule:

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

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

566 Section 5. Section **61-2f-205** is amended to read:

567 **61-2f-205. Form of license -- Display of license.**

568 (1) The division shall issue to a licensee a wall license that contains:

569 (a) the name and address of the licensee;

570 (b) the seal of the state; and

571 (c) any other matter prescribed by the division.

572 (2) The division shall send, by mail or email, the license described in Subsection (1) to
573 the licensee at the mailing address or email address furnished by the licensee.

574 (3) A principal broker shall keep the license of the principal broker and the license of
575 any associate broker or sales agent affiliated with the principal broker in the office in which the
576 licensee works to be made available on request.

577 Section 6. Section **61-2f-208** is enacted to read:

578 **61-2f-208. Surrender of license.**

579 (1) The division may, by written agreement, accept the voluntary surrender of a license
580 issued under this chapter.

581 (2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):

582 (a) does not prevent the division from pursuing additional action, including

583 disciplinary action, that relates to the surrendered license and is authorized by this chapter or by
584 rules made under this chapter; and

585 (b) terminates all rights and privileges associated with the license.

586 (3) A person may restore the rights and privileges described in Subsection (2)(b) only if
 587 the person reapplies for, and is granted, licensure in accordance with the requirements
 588 described in this chapter.

589 (4) Any documentation relating to the tender and acceptance of a voluntary surrender is
 590 a public record.

591 Section 7. Section **61-2f-308** is amended to read:

592 **61-2f-308. Brokerage agreements.**

593 (1) As used in this section:

594 (a) "Brokerage agreement" means a written agreement between a client and a principal
 595 broker:

596 (i) (A) to list for sale, lease, or exchange, real estate, an option on real estate, or an
 597 improvement on real estate; or

598 (B) for representation in the purchase, lease, or exchange of real estate, an option on
 599 real estate, or an improvement on real estate; and

600 (ii) that gives the principal broker the expectation of receiving valuable consideration
 601 in exchange for the principal broker's services.

602 ~~[(a)]~~ (b) "Client" means a person who makes an exclusive brokerage agreement with a
 603 principal broker under Subsection (1)~~[(c)]~~(d).

604 ~~[(b)]~~ (c) "Closed" means that:

605 (i) the documents required to be executed under the contract are executed;

606 (ii) the money required to be paid by either party under the contract is paid in the form
 607 of collected or cleared funds;

608 (iii) the proceeds of any new loan are delivered by the lender to the seller; and

609 (iv) the applicable documents are recorded in the office of the county recorder for the
 610 county in which the real estate is located.

611 ~~[(c)]~~ (d) "Exclusive brokerage agreement" means a ~~[written agreement between a client~~
 612 ~~and a principal broker: (i) (A) to list for sale, lease, or exchange: (I) real estate; (II) an option~~
 613 ~~on real estate; or (III) an improvement on real estate; or (B) for representation in the purchase,~~
 614 ~~lease, or exchange of: (I) real estate; (II) an option on real estate; or (III) an improvement on~~
 615 ~~real estate; (ii)]~~ brokerage agreement that gives the principal broker the sole right to act as the
 616 agent or representative of the client for the purchase, sale, lease, or exchange of~~[:]~~ real estate,

617 an option on real estate, or an improvement on real estate.

618 [~~(A) real estate;~~]

619 [~~(B) an option on real estate; or~~]

620 [~~(C) an improvement on real estate; and~~]

621 [~~(iii) that gives the principal broker the expectation of receiving valuable consideration~~
622 ~~in exchange for the principal broker's services.]~~

623 (2) (a) Except as provided in Subsection (2)(b), a principal broker subject to an
624 exclusive brokerage agreement shall:

625 (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or
626 exchange the client's real estate;

627 (ii) assist the client in developing, communicating, and presenting offers, counteroffers,
628 and notices; and

629 (iii) answer any question the client has concerning:

630 (A) an offer;

631 (B) a counteroffer;

632 (C) a notice; and

633 (D) a contingency.

634 (b) A principal broker subject to an exclusive brokerage agreement need not comply
635 with Subsection (2)(a) after:

636 (i) (A) an agreement for the sale, lease, or exchange of the real estate, option on real
637 estate, or improvement on real estate is signed;

638 (B) the contingencies related to the sale, lease, or exchange are satisfied or waived; and

639 (C) the sale, lease, or exchange is closed; or

640 (ii) the exclusive brokerage agreement expires or terminates.

641 (3) A principal broker who violates this section is subject to Sections [61-2f-404](#) and
642 [61-2f-405](#).

643 (4) (a) Subject to Subsection (4)(b), a principal broker who represents a buyer may
644 directly contact a seller who is subject to a brokerage agreement or an exclusive brokerage
645 agreement if:

646 (i) the seller's principal broker gives the buyer's principal broker written authorization;

647 or

648 (ii) subject to Subsection (4)(c), the seller gives the buyer's principal broker written
649 authorization.

650 (b) If a buyer's principal broker obtains a written authorization described in Subsection
651 (4)(a), the buyer's principal broker may contact the seller directly to:

652 (i) discuss items related to a real estate transaction between the buyer and the seller;

653 (ii) provide the seller with blank state-approved forms; and

654 (iii) negotiate the terms of a real estate transaction between the buyer and the seller.

655 (c) A buyer's principal broker may not solicit from a seller a written authorization
656 described in Subsection (4)(a)(ii).

657 (5) A principal broker who, in accordance with Subsection (4), engages in the conduct
658 described in Subsection (4)(b) is not, by that conduct, representing that the principal broker is
659 acting on behalf of both the buyer and the seller.

660 Section 8. Section **61-2f-402** is amended to read:

661 **61-2f-402. Investigations.**

662 (1) The division may make an investigation within or outside of this state as the
663 division considers necessary to determine whether a person has violated, is violating, or is
664 about to violate this chapter or any rule or order under this chapter.

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

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

671 (a) administer an oath or affirmation;

672 (b) subpoena witnesses and evidence;

673 (c) take evidence;

674 (d) require the production of a book, paper, contract, record, other document, or
675 information relevant to the investigation; and

676 (e) serve a subpoena by certified mail.

677 (4) (a) If a person is found to have violated this chapter or a rule made under this
678 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,

679 document, or record required under this chapter, including the costs incurred to copy an
680 electronic book, paper, contract, document, or record in a universally readable format.

681 (b) If a person fails to pay the costs described in Subsection (4)(a) when due, the
682 person's license, certification, or registration is automatically suspended:

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

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

685 (5) (a) Except as provided in Subsection (5)(b), the division shall commence a
686 disciplinary action under this chapter no later than the earlier of the following:

687 (i) four years after the day on which the unprofessional or unlawful conduct is reported
688 to the division; or

689 (ii) 10 years after the day on which the unprofessional or unlawful conduct occurred.

690 (b) The division may commence a disciplinary action after the time period described in
691 Subsection (5)(a) expires if:

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

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

696 (ii) the division and the person subject to a disciplinary action enter into a written
697 stipulation to extend the time period described in Subsection (5)(a).

698 Section 9. Section **61-2f-406** is amended to read:

699 **61-2f-406. Grounds for revocation of principal broker's license.**

700 (1) [~~(a)~~] An unlawful act or violation of this chapter committed by a person listed in
701 Subsection [~~(1)~~]~~(b)~~ (2) is cause for:

702 [~~(i)~~] (a) the revocation, suspension, or probation of a principal broker's license; or

703 [~~(ii)~~] (b) the imposition of a fine against the principal broker in an amount not to
704 exceed \$5,000 per violation.

705 [~~(b)~~] (2) Subsection (1)~~(a)~~ applies to an act or violation by any of the following:

706 [~~(i)~~] (a) a sales agent or associate broker employed by a principal broker;

707 [~~(ii)~~] (b) a sales agent or associate broker engaged as an independent contractor by or
708 on behalf of a principal broker; or

709 [~~(iii)~~] (c) an employee, officer, or member of a principal broker.

710 ~~[(2) (a) The revocation or suspension of a principal broker license automatically~~
711 ~~inactivates an associate broker or sales agent license granted to an individual by reason of that~~
712 ~~individual's affiliation with the principal broker whose license is revoked or suspended,~~
713 ~~pending a change of principal broker affiliation.]~~

714 ~~[(b) A principal broker shall, before the effective date of a suspension or revocation of~~
715 ~~the principal broker's license, notify in writing every licensee affiliated with the principal~~
716 ~~broker of the revocation or suspension of the principal broker license.]~~

717 Section 10. Section **61-2f-410** is enacted to read:

718 **61-2f-410. Effect of expiration, revocation, or suspension -- Notice required.**

719 (1) (a) The revocation or suspension of a principal broker license automatically
720 inactivates an associate broker license or a sales agent license that was issued based upon the
721 licensee's affiliation with the principal broker whose license is revoked or suspended, pending a
722 change of principal broker affiliation.

723 (b) If an individual's associate broker license or sales agent license becomes inactive
724 under Subsection (1)(a), the individual may affiliate with another principal broker licensed
725 under this chapter.

726 (2) Before the day on which a suspension or revocation of a principal broker's license is
727 effective, the principal broker shall notify, in writing, each licensee affiliated with the principal
728 broker:

729 (a) that the principal broker's license will be revoked or suspended;

730 (b) of the day on which the revocation or suspension is effective; and

731 (c) that the licensee's license will be inactive beginning on the day on which the
732 principal broker's license is revoked or suspended.

733 (3) If a principal broker fails to timely renew the principal broker's license in
734 accordance with this chapter, on the day on which the principal broker's license expires, the
735 principal broker shall notify, in writing, each licensee affiliated with the principal broker:

736 (a) that the principal broker's license is expired;

737 (b) of the day on which the principal broker's license expired; and

738 (c) that the licensee's license is inactive beginning on the day on which the principal
739 broker's license expired.

740 Section 11. Section **61-2g-102** is amended to read:

741 **61-2g-102. Definitions.**

742 (1) As used in this chapter:

743 (a) (i) "Appraisal" means an analysis, opinion, or conclusion relating to the nature,
744 quality, value, or utility of a specified interest in, or aspect of, identified real estate or identified
745 real property.746 (ii) An appraisal is classified by the nature of the assignment as a valuation appraisal,
747 an analysis assignment, or a review assignment in accordance with the following definitions:748 (A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that
749 relates to the nature, quality, or utility of identified real estate or identified real property.750 (B) "Review assignment" means an unbiased analysis, opinion, or conclusion that
751 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis
752 assignment.753 (C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that
754 estimates the value of an identified parcel of real estate or identified real property at a particular
755 point in time.756 (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as
757 an Illinois not-for-profit corporation on November 30, 1987.

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

759 (ii) An appraisal report is classified by the nature of the assignment as a valuation
760 report, analysis report, or review report in accordance with the definitions provided in
761 Subsection (1)(a)(ii).762 (iii) The testimony of a person relating to the person's analyses, conclusions, or
763 opinions concerning identified real estate or identified real property is considered to be an oral
764 appraisal report.765 (d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the
766 Appraisal Foundation.767 (e) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
768 established in Section [61-2g-204](#).769 (f) "Certified appraisal report" means a written or oral appraisal report that is certified
770 by a state-certified general appraiser or state-certified residential appraiser.

771 (g) "Concurrence" means that the entities that are given a concurring role jointly agree

772 to an action.

773 (h) (i) (A) "Consultation service" means an engagement to provide a real estate
774 valuation service analysis, opinion, conclusion, or other service that does not fall within the
775 definition of appraisal.

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

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

781 (i) "Contingent fee" means a fee or other form of compensation, payment of which is
782 dependent on or conditioned by:

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

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

787 (j) "Credential" means a state-issued registration, license, or certification that allows an
788 individual to perform any act or service that requires licensure or certification under this
789 chapter.

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

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

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

794 (i) a state-licensed appraiser; or

795 (ii) a state-certified appraiser.

796 [~~(l)~~] (n) "Real estate" means an identified parcel or tract of land including
797 improvements if any.

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

800 [~~(n)~~] (p) "Real estate related transaction" means:

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

803 (ii) the refinancing of real property or an interest in real property; or
804 (iii) the use of real property or an interest in real property as security for a loan or
805 investment, including mortgage-backed securities.

806 ~~[(p)]~~ (q) "Real property" means one or more defined interests, benefits, or rights
807 inherent in the ownership of real estate.

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

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

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

814 ~~[(s)]~~ (u) "Trainee" means an individual who:

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

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

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

820 ~~[(t)]~~ (v) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or
821 conclusion relating to the nature, quality, value, or utility of identified real estate or identified
822 real property that is prepared by a person who is employed or retained to act, or would be
823 perceived by third parties or the public as acting, as a disinterested third-party in rendering the
824 analysis, opinion, or conclusion.

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

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

830 Section 12. Section **61-2g-205** is amended to read:

831 **61-2g-205. Duties of board.**

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

- 834 (b) The board has the powers and duties listed in this section.
- 835 (2) The board shall:
- 836 (a) determine the experience and education requirements appropriate for a person
837 licensed under this chapter;
- 838 (b) determine the experience and education requirements appropriate for a person
839 certified under this chapter:
- 840 (i) in compliance with the minimum requirements of Financial Institutions Reform,
841 Recovery, and Enforcement Act of 1989; and
- 842 (ii) consistent with the intent of this chapter;
- 843 (c) determine the appraisal related acts that may be performed by:
- 844 (i) a trainee on the basis of the trainee's education and experience;
- 845 (ii) clerical staff; and
- 846 (iii) a person who:
- 847 (A) does not hold a license or certification; and
- 848 (B) assists an appraiser licensed or certified under this chapter in providing appraisal
849 services or consultation services;
- 850 (d) determine the procedures for a trainee to register and to renew a registration with
851 the division; and
- 852 (e) develop one or more programs to upgrade and improve the experience, education,
853 and examinations as required under this chapter.
- 854 (3) ~~[(a)]~~ The experience and education requirements ~~[established]~~ determined by the
855 board for a person licensed or certified under this chapter shall ~~[be]~~ meet or exceed the
856 minimum criteria established by the Appraisal Qualification Board~~[, unless, after notice and a~~
857 ~~public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking~~
858 ~~Act, the board finds that the minimum criteria are not appropriate for a state-licensed appraiser~~
859 ~~or a state-certified appraiser in this state].~~
- 860 ~~[(b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are~~
861 ~~not appropriate, the board shall recommend appropriate criteria to the Legislature.]~~
- 862 (4) The board shall:
- 863 (a) determine the continuing education requirements appropriate for the renewal of a
864 license, certification, or registration issued under this chapter~~;~~ ~~[except that the continuing~~

865 ~~education requirements established by the board shall at least]~~ that meet or exceed the
866 minimum criteria established by the Appraisal Qualification Board;

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

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

870 (5) (a) The board shall consider the proper interpretation or explanation of the Uniform
871 Standards of Professional Appraisal Practice as required by Section 61-2g-403 when:

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

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

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

878 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah
879 Administrative Rulemaking Act, and Section 61-2g-403, and with the concurrence of the
880 division, provide for an exemption from a provision of the Uniform Standards of Professional
881 Appraisal Practice for an activity engaged in on behalf of a governmental entity.

882 (6) (a) The board shall conduct an administrative hearing, not delegated by the board to
883 an administrative law judge, in connection with a disciplinary proceeding under Section
884 61-2g-504 concerning:

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

886 (ii) the person's failure to comply with this chapter and the Uniform Standards of
887 Professional Appraisal Practice as adopted under Section 61-2g-403.

888 (b) The board, with the concurrence of the division, shall issue in an administrative
889 hearing a decision that contains findings of fact and conclusions of law.

890 (c) When a determination is made that a person required to be licensed, certified, or
891 registered under this chapter has violated this chapter, the division shall implement disciplinary
892 action determined through concurrence of the board and the division.

893 (7) A member of the board is immune from a civil action or criminal prosecution for a
894 disciplinary proceeding concerning a person required to be registered, licensed, certified, or
895 approved as an expert under this chapter if the action is taken without malicious intent and in

896 the reasonable belief that the action taken was taken pursuant to the powers and duties vested
897 in a member of the board under this chapter.

898 (8) (a) The board shall require and pass upon proof necessary to determine the honesty,
899 competency, integrity, ~~and~~ truthfulness, and general fitness to command the confidence of the
900 community of an applicant for:

901 ~~[(a)]~~ (i) original licensure, certification, or registration; and

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

903 (b) The board may delegate to the division the authority to:

904 (i) review a class or category of applications for an original or renewed license,
905 certification, or registration;

906 (ii) determine whether an applicant meets the qualifications for licensure, certification,
907 or registration;

908 (iii) conduct any necessary hearing on an application for an original or renewed license,
909 certification, or registration; and

910 (iv) approve or deny an application for an original or renewed license, certification, or
911 registration.

912 (c) Except as provided in Subsections (8)(d) and (e), and in accordance with Title 63G,
913 Chapter 4, Administrative Procedures Act, an applicant who is denied licensure, certification,
914 or registration under this chapter may submit a request for agency review to the executive
915 director of the division within 30 days after the day on which the board issues the order
916 denying the applicant's application.

917 (d) If the board delegates to the division the authority to approve or deny an application
918 without the concurrence of the board under Subsection (8)(b), and the division denies an
919 application for licensure, certification, or registration, the applicant may, in accordance with
920 Title 63G, Chapter 4, Administrative Procedures Act, petition the board for a de novo review
921 of the application within 30 days after the day on which the division issues the order denying
922 the applicant's application.

923 (e) If the board denies an applicant's application for licensure, certification, or
924 registration after a de novo review under Subsection (8)(c), the applicant may, in accordance
925 with Title 63G, Chapter 4, Administrative Procedures Act, petition the executive director for
926 review of the board's denial within 30 days after the day on which the board issues the order

927 denying the applicant's application.

928 Section 13. Section **61-2g-302** is amended to read:

929 **61-2g-302. Registration as trainee.**

930 (1) ~~[(a)]~~ An individual ~~[is required to]~~ shall register with the division as a trainee
931 before the individual acts in the capacity of a trainee ~~[earning]~~ or earns experience for
932 licensure.

933 ~~[(b)]~~ (2) Subject to Subsection (2), the board, with the concurrence of the division,
934 shall ~~[adopt]~~ make rules in accordance with Title 63G, Chapter 3, Utah Administrative
935 Rulemaking Act, for:

936 ~~[(i)]~~ (a) the trainee registration required ~~[by this]~~ under Subsection (1); and

937 ~~[(ii)]~~ (b) renewal of ~~[the]~~ a trainee registration ~~[required by this Subsection (1)].~~

938 ~~[(2) (a) An individual applying to register as a trainee under this chapter shall:]~~

939 ~~[(i) submit a fingerprint card in a form acceptable to the division at the time of
940 applying for registration; and]~~

941 ~~[(ii) consent to a criminal background check by:]~~

942 ~~[(A) the Utah Bureau of Criminal Identification; and]~~

943 ~~[(B) the Federal Bureau of Investigation.]~~

944 ~~[(b) The division shall request the Department of Public Safety to complete a Federal
945 Bureau of Investigation criminal background check for an applicant through a national criminal
946 history system.]~~

947 ~~[(c) The applicant shall pay the cost of:]~~

948 ~~[(i) the fingerprinting required by this section; and]~~

949 ~~[(ii) the criminal background check required by this section.]~~

950 ~~[(d) (i) A registration as a trainee under this chapter is conditional pending completion
951 of the criminal background check required by this Subsection (2).]~~

952 ~~[(ii) A registration is immediately and automatically revoked if a criminal background
953 check discloses that the applicant fails to accurately disclose a criminal history involving:]~~

954 ~~[(A) the appraisal industry; or]~~

955 ~~[(B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
956 deceit.]~~

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

958 ~~disclose a criminal history other than one described in Subsection (2)(d)(ii), the division shall~~
959 ~~review the application, and in accordance with rules made by the division pursuant to Title~~
960 ~~63G, Chapter 3, Utah Administrative Rulemaking Act, may:]~~

961 ~~[(A) place one or more conditions on a registration;]~~

962 ~~[(B) place one or more restrictions on a registration;]~~

963 ~~[(C) revoke a registration; or]~~

964 ~~[(D) refer the application to the board for a decision.]~~

965 ~~[(iv) An individual whose conditional registration is automatically revoked under~~
966 ~~Subsection (2)(d)(ii) or whose registration is conditioned, restricted, or revoked under~~
967 ~~Subsection (2)(d)(iii) may appeal the action in a hearing conducted by the board:]~~

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

969 ~~[(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~

970 ~~[(v) The board may delegate to the division or an administrative law judge the~~
971 ~~authority to conduct a hearing described in Subsection (2)(d)(iv):]~~

972 ~~[(vi) Relief from an automatic revocation under Subsection (2)(d)(ii) may be granted~~
973 ~~only if:]~~

974 ~~[(A) the criminal history upon which the division bases the revocation did not occur or~~
975 ~~is the criminal history of another person;]~~

976 ~~[(B) the revocation is based on a failure to accurately disclose a criminal history, and~~
977 ~~the applicant has a reasonable good faith belief at the time of application that there was no~~
978 ~~criminal history to be disclosed; or]~~

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

980 ~~[(e) If a registration is revoked or a revocation is upheld after a hearing described in~~
981 ~~Subsection (2)(d)(iv), the individual may not apply for a new registration for a period of 12~~
982 ~~months after the day on which the registration is revoked.]~~

983 ~~[(f) The board may delegate to the division the authority to make a decision on whether~~
984 ~~relief from a revocation should be granted.]~~

985 ~~[(g) Money paid by an applicant for the cost of the criminal background check is~~
986 ~~nontlapsing.]~~

987 Section 14. Section **61-2g-304.5** is enacted to read:

988 **61-2g-304.5. Background checks.**

989 (1) (a) An individual applying for licensure, certification, or registration under this
990 chapter shall:

991 (i) submit, with the individual's application, a fingerprint card in a form acceptable to
992 the division; and

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

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

995 (B) the Federal Bureau of Investigation.

996 (b) The division shall request that the Department of Public Safety complete a Federal
997 Bureau of Investigation criminal background check for each applicant through the national
998 criminal history system or any system that succeeds the national criminal history system.

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

1000 (i) the fingerprint card described in Subsection (1)(a)(i); and

1001 (ii) a criminal background check.

1002 (d) (i) A license, certification, or registration issued under this chapter is conditional
1003 pending completion of a criminal background check.

1004 (ii) A license, certification, or registration issued under this chapter is immediately and
1005 automatically revoked if a criminal background check reveals that the applicant failed to
1006 accurately disclose a criminal history that:

1007 (A) relates to the appraisal industry; or

1008 (B) includes a felony conviction based on fraud, misrepresentation, or deceit.

1009 (iii) If a criminal background check reveals that an applicant failed to accurately
1010 disclose a criminal history other than a type described in Subsection (2)(d)(ii), the division
1011 shall review the application and, in accordance with rules made by the division pursuant to
1012 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

1013 (A) place one or more conditions on the license, certification, or registration;

1014 (B) place one or more restrictions on the license, certification, or registration;

1015 (C) revoke the license, certification, or registration; or

1016 (D) refer the application to the board for a decision.

1017 (iv) An individual whose conditional license, certification, or registration is
1018 automatically revoked under Subsection (1)(d)(ii) or whose license, certification, or registration
1019 is conditioned, restricted, or revoked under Subsection (1)(d)(iii) may appeal the action in a

1020 hearing conducted by the board in accordance with Title 63G, Chapter 4, Administrative
1021 Procedures Act.

1022 (v) The board may delegate to the division or an administrative law judge the authority
1023 to conduct a hearing described in Subsection (1)(d)(iv).

1024 (vi) The board, the division, or an administrative law judge may reverse an automatic
1025 revocation under Subsection (1)(d)(ii) only if:

1026 (A) the criminal history upon which the revocation was based did not occur or is the
1027 criminal history of another individual;

1028 (B) at the time the applicant disclosed the applicant's criminal history, the applicant
1029 had a reasonable good faith belief that there was no criminal history to be disclosed; or

1030 (C) the division failed to follow the prescribed procedure for the revocation.

1031 (e) (i) If an individual's conditional license, certification, or registration is revoked
1032 under Subsection (1)(d) and the individual does not appeal the revocation in accordance with
1033 Subsection (1)(d)(iv), the individual may not apply for a new certification, license, or
1034 registration under this chapter for a period of 12 months after the day on which the conditional
1035 license, certification, or registration is revoked.

1036 (ii) If an individual's conditional license, certification, or registration is revoked, the
1037 individual appeals that revocation in accordance with Subsection (1)(d)(iv), and the revocation
1038 is upheld, the individual may not apply for a new license, certification, or registration under
1039 this chapter for a period of 12 months after the day on which the decision from the appeal is
1040 issued.

1041 (f) The board may delegate to the division the authority to make a decision on whether
1042 relief from a revocation should be granted.

1043 (g) Money an applicant pays for the cost of the criminal background check is
1044 nonlapsing.

1045 Section 15. Section **61-2g-310** is amended to read:

1046 **61-2g-310. Reciprocal licensure.**

1047 (1) An applicant for licensure or certification in this state who is [~~licensed or certified~~]
1048 credentialed under the laws of any other state, territory, or district may obtain a [~~license or~~
1049 certification] reciprocal credential in this state [~~upon the terms and conditions determined by~~
1050 the division and the board, if, in the determination of the division and the board] if:

1051 ~~[(1) the state, territory, or the District of Columbia is considered to have substantially~~
 1052 ~~equivalent licensing laws for real estate appraisers;]~~

1053 ~~[(2) the laws of that state, territory, or the District of Columbia accord substantially~~
 1054 ~~equal reciprocal rights to a person licensed or certified and in good standing in this state; and]~~

1055 ~~[(3) no formal charges alleging violation of state appraisal licensing or certification~~
 1056 ~~laws have been filed against the applicant by the applicant's state of domicile.]~~

1057 (a) the individual holds a current, valid credential issued by a state that, on the day on
 1058 which the individual submits an application, is in compliance with Title XI of the Financial
 1059 Institutions Reform, Recovery and Enforcement Act of 1989, as determined by the Appraisal
 1060 Subcommittee of the Federal Financial Institutions Examination Council; and

1061 (b) the credentialing requirements of that state, that are in force on the day on which
 1062 the individual submits an application, meet or exceed the credentialing requirements described
 1063 in this chapter and the rules made under this chapter.

1064 (2) An individual who holds a reciprocal credential described in Subsection (1) shall
 1065 comply with all statutes and rules that govern the appraisal industry in this state, including
 1066 requirements relating to:

1067 (a) the payment of fees; and

1068 (b) continuing education.

1069 Section 16. Section **61-2g-311** is amended to read:

1070 **61-2g-311. State-licensed appraiser -- Authority and qualifications.**

1071 (1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4
 1072 family residential units in this state having a transaction value permitted under the Financial
 1073 Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

1074 (2) A state-licensed appraiser is authorized to appraise vacant or unimproved land
 1075 having a transaction value permitted under the Financial Institutions Reform, Recovery, and
 1076 Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family
 1077 purposes or for which the highest and best use is 1-4 family purposes and subdivisions for
 1078 which a development analysis/appraisal is not necessary.

1079 (3) A state-licensed appraiser may not issue a certified appraisal report.

1080 (4) To qualify as a state-licensed appraiser, an applicant must:

1081 (a) be of good moral character;

1082 (b) demonstrate honesty, competency, integrity, ~~[and]~~ truthfulness, and general fitness
 1083 to command the confidence of the community;

1084 (c) pass the licensing examination with a satisfactory score as determined by the
 1085 Appraisal Qualification Board;

1086 (d) successfully complete ~~[not less than 150 classroom hours in courses of study that~~
 1087 relate to:] the educational requirements established by rule in accordance with Subsection (5);
 1088 and

1089 ~~[(i) real estate appraisal;]~~

1090 ~~[(ii) the Uniform Standards of Professional Appraisal Practice; and]~~

1091 ~~[(iii) ethical rules to be observed by a real estate appraiser as required by Section~~
 1092 ~~61-2g-403; and]~~

1093 (e) possess ~~[the minimum number of hours of]~~ the experience in real property appraisal
 1094 ~~[as]~~ established by rule in accordance with Subsection (5).

1095 ~~[(5) The courses of study under Subsection (4)(d) shall be conducted by:]~~

1096 ~~[(a) a college or university;]~~

1097 ~~[(b) a community or junior college;]~~

1098 ~~[(c) a real estate appraisal or real estate related organization;]~~

1099 ~~[(d) a state or federal agency or commission;]~~

1100 ~~[(e) a proprietary school;]~~

1101 ~~[(f) a provider approved by a state certification and licensing agency; or]~~

1102 ~~[(g) the Appraisal Foundation or its boards.]~~

1103 (5) (a) The division shall, with the concurrence of the board, make rules in accordance
 1104 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

1105 (i) the educational requirements described in Subsection (4)(d); and

1106 (ii) the experience in real property appraisal described in Subsection (4)(e).

1107 (b) The educational and experience requirements established under Subsection (5)(a)
 1108 shall meet or exceed the educational requirements and the hourly experience requirements
 1109 adopted by the Appraisal Qualification Board.

1110 Section 17. Section **61-2g-312** is amended to read:

1111 **61-2g-312. State-certified appraisers -- Authority.**

1112 (1) A state-certified residential appraiser:

1113 (a) is authorized to appraise the types of real estate ~~[which]~~ that a state-licensed
1114 appraiser is authorized to appraise[-];

1115 ~~[(2) A state-certified residential appraiser is also]~~

1116 (b) is authorized to appraise 1-4 unit residential real estate without regard to transaction
1117 value or complexity[-]; and

1118 ~~[(3) A state-certified residential appraiser]~~

1119 (c) is not authorized to appraise subdivisions for which a development
1120 analysis/appraisal is necessary.

1121 ~~[(4)]~~ (2) A state-certified general appraiser is authorized to appraise all types of real
1122 estate and real property.

1123 (3) A state-certified appraiser who satisfies all requirements described in this chapter
1124 and in rule made under this chapter may supervise trainees as allowed by rule.

1125 Section 18. Section **61-2g-313** is amended to read:

1126 **61-2g-313. State-certified residential appraiser -- Authority and qualifications.**

1127 (1) An applicant for certification as a residential appraiser shall provide to the division
1128 evidence of:

1129 (a) the applicant's good moral character, honesty, competency, integrity, ~~[and]~~
1130 truthfulness, and general fitness to command the confidence of the community;

1131 (b) completion of the certification examination with a satisfactory score as determined
1132 by the Appraisal Qualification Board;

1133 ~~[(c) (i) an associate degree or higher degree from an accredited:]~~

1134 ~~[(A) college;]~~

1135 ~~[(B) junior college;]~~

1136 ~~[(C) community college; or]~~

1137 ~~[(D) university; or]~~

1138 ~~[(ii) successfully passing a curriculum determined by rule of collegiate level subject~~
1139 ~~matter courses from an accredited:]~~

1140 ~~[(A) college;]~~

1141 ~~[(B) junior college;]~~

1142 ~~[(C) community college; or]~~

1143 ~~[(D) university;]~~

1144 ~~[(d) satisfactory completion of not less than 200 classroom hours in a curriculum;]~~
 1145 ~~[(i) of specific appraisal education determined by rule made by the board, with the~~
 1146 ~~concurrence of the division; and]~~
 1147 ~~[(ii) that includes a course in the Uniform Standards of Professional Practice or its~~
 1148 ~~equivalent that is approved by the Appraisal Qualification Board;]~~
 1149 (c) completion of the educational requirements established by rule in accordance with

1150 Subsection (3); and

1151 ~~[(e)]~~ (d) ~~[the minimum number of hours of]~~ experience in real property appraisal as
 1152 established by rule~~;~~ and] in accordance with Subsection (3).

1153 ~~[(f) acquiring the experience required under Subsection (1)(e) within a reasonable~~
 1154 ~~period, as determined by rule, immediately preceding the filing of the application for~~
 1155 ~~certification.];~~

1156 (2) Upon request by the division, an applicant shall make available to the division for
 1157 examination:

1158 (a) a detailed listing of the real estate appraisal reports or file memoranda ~~[for each~~
 1159 ~~year]~~ for which experience is claimed; and

1160 (b) a sample selected by the division of appraisal reports that the applicant has prepared
 1161 in the course of the applicant's appraisal practice.

1162 ~~[(3) The classroom hours required by Subsection (1)(d) shall be provided by:]~~

1163 ~~[(a) a college or university;]~~

1164 ~~[(b) a community or junior college;]~~

1165 ~~[(c) a real estate appraisal or real estate related organization;]~~

1166 ~~[(d) a state or federal agency or commission;]~~

1167 ~~[(e) a proprietary school;]~~

1168 ~~[(f) a provider approved by a state certification and licensing agency; or]~~

1169 ~~[(g) the Appraisal Foundation or its boards.];~~

1170 (3) (a) The division shall, with the concurrence of the board, make rules in accordance
 1171 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

1172 (i) the educational requirements described in Subsection (1)(c); and

1173 (ii) the experience in real property appraisal described in Subsection (1)(d).

1174 (b) The educational and experience requirements established under Subsection (3)(a)

1175 shall meet or exceed the educational requirements and the hourly experience requirements
 1176 adopted by the Appraisal Qualification Board.

1177 Section 19. Section **61-2g-314** is amended to read:

1178 **61-2g-314. State-certified general appraiser -- Application -- Qualifications.**

1179 (1) An applicant for certification as a general appraiser shall provide to the division
 1180 evidence of:

1181 (a) the applicant's good moral character, honesty, competency, integrity, ~~[and]~~
 1182 truthfulness, and general fitness to command the confidence of the community;

1183 (b) completion of the certification examination with a satisfactory score as determined
 1184 by the Appraisal Qualification Board;

1185 ~~[(c) (i) a bachelors degree or higher degree from an accredited college or university; or]~~

1186 ~~[(ii) successfully passing a curriculum determined by rule of collegiate level subject
 1187 matter courses from an accredited:]~~

1188 ~~[(A) college;]~~

1189 ~~[(B) junior college;]~~

1190 ~~[(C) community college; or]~~

1191 ~~[(D) university;]~~

1192 ~~[(d) satisfactory completion of not less than 300 classroom hours in a curriculum:]~~

1193 ~~[(i) of specific appraisal education determined by rule; and]~~

1194 ~~[(ii) that includes a course in the Uniform Standards of Professional Practice or its
 1195 equivalent that has been approved by the Appraisal Qualification Board;]~~

1196 (c) completion of the educational requirements established by rule in accordance with
 1197 Subsection (3); and

1198 ~~[(e)]~~ (d) [the minimum number of hours of] experience in real property appraisal as
 1199 established by rule[; and] in accordance with Subsection (3).

1200 ~~[(f) acquiring the experience required under Subsection (1)(e) within a reasonable~~
 1201 ~~period, as determined by rule, immediately preceding the filing of the application for~~
 1202 ~~certification.]~~

1203 (2) Upon request by the division, an applicant shall make available to the division for
 1204 examination:

1205 (a) a detailed listing of the real estate appraisal reports or file memoranda ~~[for each~~

1206 year] for which experience is claimed; and

1207 (b) a sample selected by the division of appraisal reports that the applicant has prepared
1208 in the course of the applicant's appraisal practice.

1209 [~~(3) The classroom hours required by Subsection (1)(d) shall be provided by:~~]

1210 [~~(a) a college or university;~~]

1211 [~~(b) a community or junior college;~~]

1212 [~~(c) a real estate appraisal or real estate related organization;~~]

1213 [~~(d) a state or federal agency or commission;~~]

1214 [~~(e) a proprietary school;~~]

1215 [~~(f) a provider approved by a state certification and licensing agency; or]~~

1216 [~~(g) the Appraisal Foundation or its boards.~~]

1217 (3) (a) The division shall, with the concurrence of the board, make rules in accordance
1218 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

1219 (i) the educational requirements described in Subsection (1)(c); and

1220 (ii) the experience in real property appraisal described in Subsection (1)(d).

1221 (b) The educational and experience requirements established under Subsection (3)(a)
1222 shall meet or exceed the educational requirements and the hourly experience requirements
1223 adopted by the Appraisal Qualification Board.

1224 Section 20. Section **61-2g-316** is enacted to read:

1225 **61-2g-316. Surrender of license.**

1226 (1) The division may, by written agreement, accept the voluntary surrender of a license
1227 issued under this chapter.

1228 (2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):

1229 (a) does not prevent the division from pursuing additional action, including

1230 disciplinary action, that relates to the surrendered license and is authorized by this chapter or by
1231 rules made under this chapter; and

1232 (b) terminates all rights and privileges associated with the license.

1233 (3) A person may restore the rights and privileges described in Subsection (2)(b) only if
1234 the person reapplies for, and is granted, licensure in accordance with the requirements
1235 described in this chapter.

1236 (4) Any documentation relating to the tender and acceptance of a voluntary surrender is

1237 a public record.

Legislative Review Note
as of 2-3-14 8:08 AM

Office of Legislative Research and General Counsel