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REAL ESTATE AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Calvin R. Musselman
Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 61-2c-102**, as last amended by Laws of Utah 2020, Chapter 72
- 61-2c-402**, as last amended by Laws of Utah 2022, Chapter 204
- 61-2f-102**, as last amended by Laws of Utah 2017, Chapter 182
- 61-2f-301**, as last amended by Laws of Utah 2012, Chapter 166
- 61-2f-401**, as last amended by Laws of Utah 2023, Chapter 141
- 61-2f-404**, as last amended by Laws of Utah 2016, Chapter 384
- 61-2g-306**, as last amended by Laws of Utah 2012, Chapter 166

28 **63I-2-261**, as last amended by Laws of Utah 2023, Chapter 33

29

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

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

32 **61-2c-102 . Definitions.**

33 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

48 (i) licensed as a lending manager; and

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

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

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

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

56 (iii) that operates under:

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

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

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

60 (i) a Saturday;

61 (ii) a Sunday; or

- 62 (iii) a federal or state holiday.
- 63 (i) (i) "Business of residential mortgage loans" means for compensation or in the
64 expectation of compensation to:
- 65 (A) engage in an act that makes an individual a mortgage loan originator;
66 (B) make or originate a residential mortgage loan;
67 (C) directly or indirectly solicit a residential mortgage loan for another;
68 (D) unless exempt under Section 61-2c-105 or excluded under Subsection
69 (1)(i)(ii), render services related to the origination of a residential mortgage
70 loan including:
71 (I) preparing a loan package;
72 (II) communicating with the borrower or lender;
73 (III) advising on a loan term;
74 (IV) receiving, collecting, or distributing information common for the
75 processing or underwriting of a loan in the mortgage industry; or
76 (V) communicating with a consumer to obtain information necessary for the
77 processing or underwriting of a residential mortgage loan; or
78 (E) engage in loan modification assistance.
- 79 (ii) "Business of residential mortgage loans" does not include:
- 80 (A) ownership of an entity that engages in the business of residential mortgage
81 loans if the owner does not personally perform the acts listed in Subsection
82 (1)(i)(i);
83 (B) acting in one or more of the following capacities:
84 (I) a loan wholesaler;
85 (II) an account executive for a loan wholesaler;
86 (III) a loan closer; or
87 (IV) funding a loan; or
88 (C) if employed by a person who owns or services an existing residential
89 mortgage loan, the direct negotiation with the borrower for the purpose of loan
90 modification.
- 91 (j) "Certified education provider" means a person who is certified under Section
92 61-2c-204.1 to provide Utah-specific prelicensing education.
- 93 (k) "Closed-end" means a loan:
94 (i) with a fixed amount borrowed; and
95 (ii) that does not permit additional borrowing secured by the same collateral.

- 96 (l) "Commission" means the Residential Mortgage Regulatory Commission created in
97 Section 61-2c-104.
- 98 (m) "Community development financial institution" means the same as that term is
99 defined in 12 U.S.C. Sec. 4702.
- 100 (n) "Compensation" means anything of economic value that is paid, loaned, granted,
101 given, donated, or transferred to an individual or entity for or in consideration of:
102 (i) services;
103 (ii) personal or real property; or
104 (iii) another thing of value.
- 105 (o) "Concurrence" means that entities given a concurring role must jointly agree for the
106 action to be taken.
- 107 (p) "Continuing education" means education an individual takes in order to meet the
108 education requirements imposed by Sections 61-2c-204.1 and 61-2c-205 to activate,
109 renew, or reinstate a license under this chapter.
- 110 (q) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or
111 indirectly:
112 (i) direct or exercise a controlling interest over:
113 (A) the management or policies of an entity; or
114 (B) the election of a majority of the directors, officers, managers, or managing
115 partners of an entity;
116 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
117 (iii) vote more than 5% of a class of voting securities of an entity by another entity.
- 118 (r) (i) "Control person" means an individual identified by an entity registered with the
119 nationwide database as being an individual directing the management or policies
120 of the entity.
121 (ii) "Control person" may include one of the following who is identified as provided
122 in Subsection (1)(r)(i):
123 (A) a manager;
124 (B) a managing partner;
125 (C) a director;
126 (D) an executive officer; or
127 (E) an individual who performs a function similar to an individual listed in this
128 Subsection (1)(r)(ii).
- 129 (s) "Depository institution" means the same as that term is defined in Section 7-1-103.

- 130 (t) "Director" means the director of the division.
- 131 (u) "Division" means the Division of Real Estate.
- 132 (v) "Dwelling" means a residential structure attached to real property that contains one
133 to four family units including any of the following if used as a residence:
- 134 (i) a condominium unit;
- 135 (ii) a cooperative unit;
- 136 (iii) a manufactured home; or
- 137 (iv) a house.
- 138 (w) "Employee":
- 139 (i) means an individual:
- 140 (A) whose manner and means of work performance are subject to the right of
141 control of, or are controlled by, another person; and
- 142 (B) whose compensation for federal income tax purposes is reported, or is
143 required to be reported, on a W-2 form issued by the controlling person; and
- 144 (ii) does not include an independent contractor who performs duties other than at the
145 direction of, and subject to the supervision and instruction of, another person.
- 146 (x) "Entity" means:
- 147 (i) a corporation;
- 148 (ii) a limited liability company;
- 149 (iii) a partnership;
- 150 (iv) a company;
- 151 (v) an association;
- 152 (vi) a joint venture;
- 153 (vii) a business trust;
- 154 (viii) a trust; or
- 155 (ix) another organization.
- 156 (y) "Executive director" means the executive director of the Department of Commerce.
- 157 (z) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage
158 Licensing, 12 U.S.C. Sec. 5101 et seq.
- 159 (aa) "Foreclosure rescue" means, for compensation or with the expectation of receiving
160 valuable consideration, to:
- 161 (i) engage, or offer to engage, in an act that:
- 162 (A) the person represents will assist a borrower in preventing a foreclosure; and
- 163 (B) relates to a transaction involving the transfer of title to residential real

- 164 property; or
- 165 (ii) as an employee or agent of another person:
- 166 (A) solicit, or offer that the other person will engage in an act described in
- 167 Subsection (1)(aa)(i); or
- 168 (B) negotiate terms in relationship to an act described in Subsection (1)(aa)(i).
- 169 (bb) "Inactive status" means a dormant status into which an unexpired license is placed
- 170 when the holder of the license is not currently engaging in the business of residential
- 171 mortgage loans.
- 172 (cc) "Lending manager" means an individual licensed as a lending manager under
- 173 Section 61-2c-206 to transact the business of residential mortgage loans.
- 174 (dd) "Licensee" means a person licensed with the division under this chapter.
- 175 (ee) "Licensing examination" means the examination required by Section 61-2c-204.1 or
- 176 61-2c-206 for an individual to obtain a license under this chapter.
- 177 (ff) "Loan modification assistance" means, for compensation or with the expectation of
- 178 receiving valuable consideration, to:
- 179 (i) act, or offer to act, on behalf of a person to:
- 180 (A) obtain a loan term of a residential mortgage loan that is different from an
- 181 existing loan term including:
- 182 (I) an increase or decrease in an interest rate;
- 183 (II) a change to the type of interest rate;
- 184 (III) an increase or decrease in the principal amount of the residential mortgage
- 185 loan;
- 186 (IV) a change in the number of required period payments;
- 187 (V) an addition of collateral;
- 188 (VI) a change to, or addition of, a prepayment penalty;
- 189 (VII) an addition of a cosigner; or
- 190 (VIII) a change in persons obligated under the existing residential mortgage
- 191 loan; or
- 192 (B) substitute a new residential mortgage loan for an existing residential mortgage
- 193 loan; or
- 194 (ii) as an employee or agent of another person:
- 195 (A) solicit, or offer that the other person will engage in an act described in
- 196 Subsection (1)(ff)(i); or
- 197 (B) negotiate terms in relationship to an act described in Subsection (1)(ff)(i).

- 198 (gg) (i) "Mortgage loan originator" means an individual who, for compensation or in
199 expectation of compensation:
- 200 (A) (I) takes a residential mortgage loan application;
- 201 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:
- 202 (Aa) a purchase;
- 203 (Bb) a refinance;
- 204 (Cc) a loan modification assistance; or
- 205 (Dd) a foreclosure rescue; or
- 206 (III) directly or indirectly solicits a residential mortgage loan for another
207 person; and
- 208 (B) is licensed as a mortgage loan originator in accordance with this chapter.
- 209 (ii) "Mortgage loan originator" does not include a person who:
- 210 (A) is described in Subsection (1)(gg)(i), but who performs exclusively
211 administrative or clerical tasks as described in Subsection (1)(i)(ii)(A);
- 212 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
- 213 (II) performs only real estate brokerage activities; and
- 214 (III) receives no compensation from:
- 215 (Aa) a lender;
- 216 (Bb) a lending manager; or
- 217 (Cc) an agent of a lender or lending manager; or
- 218 (C) is solely involved in extension of credit relating to a timeshare plan, as defined
219 in 11 U.S.C. Sec. 101(53D).
- 220 (hh) "Nationwide database" means the Nationwide Mortgage Licensing System and
221 Registry, authorized under federal licensing requirements.
- 222 (ii) "Nontraditional mortgage product" means a mortgage product other than a 30-year
223 fixed rate mortgage.
- 224 (jj) "Person" means an individual or entity.
- 225 (kk) "Prelicensing education" means education taken by an individual seeking to be
226 licensed under this chapter in order to meet the education requirements imposed by
227 Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this
228 chapter.
- 229 (ll) "Principal lending manager" means an individual:
- 230 (i) licensed as a lending manager under Section 61-2c-206; and
- 231 (ii) identified in the nationwide database by the individual's sponsoring entity as the

- 232 entity's principal lending manager.
- 233 (mm) "Prospective borrower" means a person applying for a mortgage from a person
234 who is required to be licensed under this chapter.
- 235 (nn) "Record" means information that is:
- 236 (i) prepared, owned, received, or retained by a person; and
- 237 (ii) (A) inscribed on a tangible medium; or
- 238 (B) (I) stored in an electronic or other medium; and
- 239 (II) in a perceivable and reproducible form.
- 240 (oo) "Residential mortgage loan" means an extension of credit, if:
- 241 (i) the loan or extension of credit is secured by a:
- 242 (A) mortgage;
- 243 (B) deed of trust; or
- 244 (C) consensual security interest; and
- 245 (ii) the mortgage, deed of trust, or consensual security interest described in
- 246 Subsection (1)(oo)(i):
- 247 (A) is on a dwelling located in the state; and
- 248 (B) is created with the consent of the owner of the residential real property.
- 249 (pp) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules made thereunder.
- 250 (qq) "Settlement" means the time at which each of the following is complete:
- 251 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the
- 252 escrow or closing office each document required by:
- 253 (A) the real estate purchase contract;
- 254 (B) the lender;
- 255 (C) the title insurance company;
- 256 (D) the escrow or closing office;
- 257 (E) the written escrow instructions; or
- 258 (F) applicable law;
- 259 (ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office
- 260 any money, except for the proceeds of any new loan, that the borrower is required
- 261 to pay; and
- 262 (iii) if applicable, the seller delivers to the buyer or to the escrow or closing office
- 263 any money that the seller is required to pay.
- 264 (rr) "Settlement services" means a service provided in connection with a real estate
- 265 settlement, including a title search, a title examination, the provision of a title

266 certificate, services related to title insurance, services rendered by an attorney,
267 preparing documents, a property survey, rendering a credit report or appraisal, a pest
268 or fungus inspection, services rendered by a real estate agent or broker, the
269 origination of a federally related mortgage loan, and the processing of a federally
270 related mortgage.

271 (ss) "Sponsorship" means an association in accordance with Section 61-2c-209 between
272 an individual licensed under this chapter and an entity licensed under this chapter.

273 (tt) "State" means:

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

275 (ii) the District of Columbia; or

276 (iii) the Commonwealth of Puerto Rico.

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

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

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

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

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

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

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

289 **61-2c-402 . Disciplinary action.**

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

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

294 (ii) violates this chapter; or

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

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

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

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

299 (c) (i) is a certified education provider or person required to be certified to provide

- 300 prelicensing or continuing education under this chapter; and
301 (ii) violates this chapter.
- 302 (2) The commission, with the concurrence of the director, may against a person described
303 in Subsection (1):
- 304 (a) impose an educational requirement;
- 305 (b) impose a civil penalty against the individual or entity in an amount not to exceed the
306 greater of:
- 307 (i) except as provided in Subsection (2)(b)(ii), \$5,000 for each violation;
- 308 (ii) \$10,000 for each violation, if the person knew or should have known that the
309 property owner was an individual 65 years old or older, or a vulnerable adult; or
- 310 ~~[(ii)]~~ (iii) the amount equal to any gain or economic benefit derived from each
311 violation;
- 312 (c) deny an application for an original license;
- 313 (d) do any of the following to a license under this chapter:
- 314 (i) suspend;
- 315 (ii) revoke;
- 316 (iii) place on probation;
- 317 (iv) reduce a lending manager license to a loan originator license;
- 318 (v) deny renewal;
- 319 (vi) deny reinstatement; or
- 320 (vii) in the case of a denial of a license or a suspension that extends to the expiration
321 date of a license, set a waiting period for a person to apply for a license under this
322 chapter;
- 323 (e) issue a cease and desist order;
- 324 (f) require the reimbursement of the division of costs incurred by the division related to
325 the recovery, storage, or destruction of a record that the person disposes of in a
326 manner that violates this chapter or a rule made under this chapter;
- 327 (g) modify a sanction described in Subsections (2)(a) through (f) if the commission finds
328 that the person complies with court ordered restitution; or
- 329 (h) impose any combination of sanctions described in this Subsection (2).
- 330 (3) (a) If the commission, with the concurrence of the division, issues an order that
331 orders a fine or educational requirements as part of a disciplinary action against a
332 person, including a stipulation and order, the commission shall state in the order the
333 deadline by which the person shall comply with the fine or educational requirements.

- 334 (b) If a person fails to comply with a stated deadline:
- 335 (i) the person's license or certificate is automatically suspended:
- 336 (A) beginning the day specified in the order as the deadline for compliance; and
- 337 (B) ending the day on which the person complies in full with the order; and
- 338 (ii) if the person fails to pay a fine required by an order, the division may begin a
- 339 collection process:
- 340 (A) established by the division by rule made in accordance with Title 63G,
- 341 Chapter 3, Utah Administrative Rulemaking Act; and
- 342 (B) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- 343 (4) (a) A person whose license was revoked under this chapter before May 11, 2010,
- 344 may request that the revocation be converted to a suspension under this Subsection
- 345 (4):
- 346 (i) if the revocation was not as a result of a felony conviction involving fraud,
- 347 misrepresentation, deceit, dishonesty, breach of trust, or money laundering; and
- 348 (ii) by filing a written request with the division.
- 349 (b) Upon receipt of a request to convert a revocation under this Subsection (4), the
- 350 commission, with the concurrence of the director, shall determine whether to convert
- 351 the revocation.
- 352 (c) The commission may delegate to the division the authority to ~~[make a decision on]~~
- 353 decide whether to convert a revocation.
- 354 (d) If the division, acting under Subsection (4)(c), denies a request to convert a
- 355 revocation, the person who requests the conversion may appeal the decision in a
- 356 hearing conducted by the commission:
- 357 (i) after the division denies the request to convert the revocation; and
- 358 (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- 359 (e) The commission may delegate to the division or an administrative law judge the
- 360 authority to conduct a hearing described in Subsection (4)(d).
- 361 (5) (a) A person whose license the commission revokes in accordance with this section
- 362 may file a written request with the division for the vacation of the license revocation,
- 363 if the person:
- 364 (i) has not held a license under this chapter for at least eight years before the day on
- 365 which the person files the request; and
- 366 (ii) has not been convicted of a felony involving:
- 367 (A) fraud;

- 368 (B) misrepresentation;
369 (C) deceit;
370 (D) dishonesty;
371 (E) breach of trust; or
372 (F) money laundering.
- 373 (b) After receiving a written request a person makes in accordance with Subsection
374 (5)(a), the commission may vacate the revocation of the person's license:
375 (i) after a hearing; and
376 (ii) with the concurrence of the division.
- 377 (c) A person whose license revocation is vacated in accordance with this Subsection (5)
378 may apply for licensure in accordance with this chapter.
- 379 Section 3. Section **61-2f-102** is amended to read:
380 **61-2f-102 . Definitions.**
- 381 As used in this chapter:
- 382 (1) "Associate broker" means an individual who is:
383 (a) employed or engaged as an independent contractor by or on behalf of a principal
384 broker to perform an act described in Subsection (20) for valuable consideration; and
385 (b) licensed under this chapter as an associate broker.
- 386 (2) "Branch broker" means an associate broker who manages a principal broker's branch
387 office under the supervision of the principal broker.
- 388 (3) "Branch office" means a principal broker's real estate brokerage office that is not the
389 principal broker's main office.
- 390 (4) "Business day" means a day other than:
391 (a) a Saturday;
392 (b) a Sunday; or
393 (c) a federal or state holiday.
- 394 (5) "Business opportunity" means the sale, lease, or exchange of any business that includes
395 an interest in real estate.
- 396 (6) "Commission" means the Real Estate Commission established under this chapter.
- 397 (7) "Concurrence" means the entities given a concurring role must jointly agree for action
398 to be taken.
- 399 (8) "Condominium homeowners' association" means the condominium unit owners acting
400 as a group in accordance with declarations and bylaws.
- 401 (9) (a) "Condominium hotel" means one or more condominium units that are operated as

- 402 a hotel.
- 403 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of
404 which are owned by a single entity.
- 405 (10) "Condominium unit" means the same as that term is defined in Section 57-8-3.
- 406 (11) "Director" means the director of the Division of Real Estate.
- 407 (12) "Division" means the Division of Real Estate.
- 408 (13) "Dual broker" means a principal broker of a real estate sales brokerage who obtains
409 from the division a dual broker license in order to function as the principal broker of a
410 property management company that is a separate entity from the real estate sales
411 brokerage.
- 412 (14) "Entity" means:
- 413 (a) a corporation;
- 414 (b) a partnership;
- 415 (c) a limited liability company;
- 416 (d) a company;
- 417 (e) an association;
- 418 (f) a joint venture;
- 419 (g) a business trust;
- 420 (h) a trust; or
- 421 (i) any organization similar to an entity described in Subsections (14)(a) through (h).
- 422 (15) "Executive director" means the director of the Department of Commerce.
- 423 (16) "Foreclosure rescue" means, for compensation or with the expectation of receiving
424 valuable consideration, to:
- 425 (a) engage, or offer to engage, in an act that:
- 426 (i) the person represents will assist a borrower in preventing a foreclosure; and
- 427 (ii) relates to a transaction involving the transfer of title to residential real property; or
- 428 (b) as an employee or agent of another person:
- 429 (i) solicit, or offer that the other person will engage in an act described in Subsection
430 (16)(a); or
- 431 (ii) negotiate terms in relationship to an act described in Subsection (16)(a).
- 432 (17) "Loan modification assistance" means, for compensation or with the expectation of
433 receiving valuable consideration, to:
- 434 (a) act, or offer to act, on behalf of a person to:
- 435 (i) obtain a loan term of a residential mortgage loan that is different from an existing

- 436 loan term including:
- 437 (A) an increase or decrease in an interest rate;
- 438 (B) a change to the type of interest rate;
- 439 (C) an increase or decrease in the principal amount of the residential mortgage
- 440 loan;
- 441 (D) a change in the number of required period payments;
- 442 (E) an addition of collateral;
- 443 (F) a change to, or addition of, a prepayment penalty;
- 444 (G) an addition of a cosigner; or
- 445 (H) a change in persons obligated under the existing residential mortgage loan; or
- 446 (ii) substitute a new residential mortgage loan for an existing residential mortgage
- 447 loan; or
- 448 (b) as an employee or agent of another person:
- 449 (i) solicit, or offer that the other person will engage in an act described in Subsection
- 450 (17)(a); or
- 451 (ii) negotiate terms in relationship to an act described in Subsection (17)(a).
- 452 (18) "Main office" means the address which a principal broker designates with the division
- 453 as the principal broker's primary brokerage office.
- 454 (19) "Person" means an individual or entity.
- 455 (20) "Principal broker" means an individual who is licensed or required to be licensed as a
- 456 principal broker under this chapter who:
- 457 (a) sells or lists for sale real estate, including real estate being sold as part of a
- 458 foreclosure rescue, or a business opportunity with the expectation of receiving
- 459 valuable consideration;
- 460 (b) buys, exchanges, or auctions real estate, an option on real estate, a business
- 461 opportunity, or an improvement on real estate with the expectation of receiving
- 462 valuable consideration;
- 463 (c) advertises, offers, attempts, or otherwise holds the individual out to be engaged in the
- 464 business described in Subsection (20)(a) or (b);
- 465 (d) is employed by or on behalf of the owner of real estate or by a prospective purchaser
- 466 of real estate and performs an act described in Subsection (20)(a), whether the
- 467 individual's compensation is at a stated salary, a commission basis, upon a salary and
- 468 commission basis, or otherwise;
- 469 (e) with the expectation of receiving valuable consideration, manages property owned by

- 470 another person;
- 471 (f) advertises or otherwise holds the individual out to be engaged in property
472 management;
- 473 (g) with the expectation of receiving valuable consideration, assists or directs in the
474 procurement of prospects for or the negotiation of a transaction listed in Subsections
475 (20)(a) and (e);
- 476 (h) except for a mortgage lender, title insurance producer, or an employee of a mortgage
477 lender or title insurance producer, assists or directs in the closing of a real estate
478 transaction with the expectation of receiving valuable consideration;
- 479 (i) engages in foreclosure rescue; or
- 480 (j) advertises, offers, attempts, or otherwise holds the person out as being engaged in
481 foreclosure rescue.
- 482 (21) (a) "Property management" means engaging in, with the expectation of receiving
483 valuable consideration, the management of real estate owned by another person or
484 advertising or otherwise claiming to be engaged in property management by:
- 485 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
486 participating in a transaction calculated to secure the rental or leasing of real estate;
- 487 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
488 estate and accounting for and disbursing the money collected; or
- 489 (iii) authorizing expenditures for repairs to the real estate.
- 490 (b) "Property management" does not include:
- 491 (i) hotel or motel management;
- 492 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
493 condominiums, condominium hotels, mobile home park accommodations,
494 campgrounds, or similar public accommodations for a period of less than 30
495 consecutive days, and the management activities associated with these rentals; or
- 496 (iii) the leasing or management of surface or subsurface minerals or oil and gas
497 interests, if the leasing or management is separate from a sale or lease of the
498 surface estate.
- 499 (22) "Property management sales agent" means a sales agent who:
- 500 (a) is affiliated with a dual broker through the dual broker's property management
501 company; and
- 502 (b) is designated by the dual broker as a property management sales agent.
- 503 (23) "Real estate" includes leaseholds and business opportunities involving real property.

- 504 (24) (a) "Regular salaried employee" means an individual who performs a service for
 505 wages or other remuneration, whose employer withholds federal employment taxes
 506 under a contract of hire, written or oral, express or implied.
- 507 (b) "Regular salaried employee" does not include an individual who performs services
 508 on a project-by-project basis or on a commission basis.
- 509 (25) "Reinstatement" means restoring a license that has expired or has been suspended.
- 510 (26) "Reissuance" means the process by which a licensee may obtain a license following
 511 revocation of the license.
- 512 (27) "Renewal" means extending a license for an additional licensing period on or before
 513 the date the license expires.
- 514 (28) "Sales agent" means an individual who is:
- 515 (a) affiliated with a principal broker, either as an independent contractor or an employee
 516 as provided in Section 61-2f-303, to perform for valuable consideration an act
 517 described in Subsection (20); and
- 518 (b) licensed under this chapter as a sales agent.
- 519 (29) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.
- 520 Section 4. Section **61-2f-301** is amended to read:
- 521 **61-2f-301 . Reporting requirements.**
- 522 (1) A licensee shall notify the division of the following by sending the division a signed
 523 statement within 10 business days ~~[of]~~ after the day on which:
- 524 ~~[(a) a conviction of, or the entry of a plea in abeyance to:]~~
- 525 ~~[(i) a felony; or]~~
- 526 ~~[(ii) a misdemeanor involving financial services or a financial services-related business;~~
 527 ~~fraud, a false statement or omission, theft or wrongful taking of property, bribery,~~
 528 ~~perjury, forgery, counterfeiting, or extortion;]~~
- 529 ~~[(b) the potential resolution of a felony or of a misdemeanor described in Subsection~~
 530 ~~(1)(a)(ii) by:]~~
- 531 ~~[(i) a diversion agreement; or]~~
- 532 ~~[(ii) another agreement under which a criminal charge is held in suspense for a period~~
 533 ~~of time;]~~
- 534 ~~[(e)]~~ (a) ~~[the filing of]~~ a personal or brokerage bankruptcy is filed, if the licensee is a
 535 principal broker;
- 536 ~~[(d)]~~ (b) ~~[the suspension, revocation, surrender, cancellation, or denial of]~~ a license or
 537 registration of the licensee that is necessary to engage in an occupation or profession

538 is suspended, revoked, surrendered, canceled, or denied, regardless of whether the
539 license or registration is issued by this state or another jurisdiction; or
540 ~~[(e)] (c) [the entry of]~~a cease and desist order or a temporary or permanent injunction is
541 issued:

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

543 (ii) on the basis of:

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

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

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

548 Section 5. Section **61-2f-401** is amended to read:

549 **61-2f-401 . Grounds for disciplinary action.**

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

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

553 (b) making an intentional misrepresentation;

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

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

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

559 (2) acting for more than one party in a transaction without the informed written consent of
560 the parties;

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

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

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

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

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

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

- 572 (5) paying or offering to pay valuable consideration to a person not licensed under this
573 chapter, except that valuable consideration may be shared:
- 574 (a) with a principal broker of another jurisdiction; or
575 (b) as provided under:
- 576 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
577 (ii) Title 16, Chapter 11, Professional Corporation Act; or
578 (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
579 appropriate pursuant to Section 48-3a-1405;
- 580 (6) for a principal broker, paying or offering to pay a sales agent or associate broker who is
581 not affiliated with the principal broker at the time the sales agent or associate broker
582 earned the compensation;
- 583 (7) being incompetent to act as a principal broker, associate broker, or sales agent in such
584 manner as to safeguard the interests of the public;
- 585 (8) failing to voluntarily furnish a copy of a document to the parties before and after the
586 execution of a document;
- 587 (9) failing to keep and make available for inspection by the division a record of each
588 transaction, including:
- 589 (a) the names of buyers and sellers or lessees and lessors;
590 (b) the identification of real estate;
591 (c) the sale or rental price;
592 (d) money received in trust;
593 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
594 (f) any other information required by rule;
- 595 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the
596 purchase, sale, or rental is made for that person or for an undisclosed principal;
- 597 (11) regardless of whether the crime is related to the business of real estate:
- 598 (a) be convicted of:
- 599 (i) a felony; or
600 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 601 (A) a class A misdemeanor;
602 (B) a class B misdemeanor; or
603 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 604 (b) plead guilty or nolo contendere to:
- 605 (i) a felony; or

- 606 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
607 (A) a class A misdemeanor;
608 (B) a class B misdemeanor; or
609 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 610 (c) enter into a plea in abeyance agreement in relation to:
611 (i) a felony; or
612 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
613 (A) a class A misdemeanor;
614 (B) a class B misdemeanor; or
615 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 616 (12) advertising the availability of real estate or the services of a licensee in a false,
617 misleading, or deceptive manner;
- 618 (13) in the case of a principal broker or a branch broker, failing to exercise active and
619 reasonable supervision, as the commission may define by rule made in accordance with
620 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the
621 principal broker's or branch broker's licensed or unlicensed staff;
- 622 (14) violating or disregarding:
623 (a) this chapter;
624 (b) an order of the commission; or
625 (c) the rules adopted by the commission and the division;
- 626 (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate
627 transaction;
- 628 (16) any other conduct which constitutes dishonest dealing;
- 629 (17) having one of the following suspended, revoked, surrendered, or cancelled on the basis
630 of misconduct in a professional capacity that relates to character, honesty, integrity, or
631 truthfulness:
632 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
633 (b) another license, registration, or certificate to engage in an occupation or profession
634 issued by this state or another jurisdiction;
- 635 (18) failing to respond to a request by the division in an investigation authorized under this
636 chapter within 10 days after the day on which the request is served, including:
637 (a) failing to respond to a subpoena;
638 (b) withholding evidence; or
639 (c) failing to produce documents or records;

- 640 (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 641 (a) providing a title insurance product or service without the approval required by
- 642 Section 31A-2-405; or
- 643 (b) knowingly providing false or misleading information in the statement required by
- 644 Subsection 31A-2-405(2);
- 645 (20) violating an independent contractor agreement between a principal broker and a sales
- 646 agent or associate broker as evidenced by a final judgment of a court;
- 647 (21) violating Title 57, Chapter 30, Residential Property Service Agreements;
- 648 (22) (a) engaging in an act of loan modification assistance that requires licensure as a
- 649 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and
- 650 Licensing Act, without being licensed under that chapter;
- 651 (b) engaging in an act of foreclosure rescue without entering into a written agreement
- 652 specifying what one or more acts of foreclosure rescue will be completed;
- 653 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act
- 654 of foreclosure rescue by:
- 655 (i) suggesting to the person that the licensee has a special relationship with the
- 656 person's lender or loan servicer; or
- 657 (ii) falsely representing or advertising that the licensee is acting on behalf of:
- 658 (A) a government agency;
- 659 (B) the person's lender or loan servicer; or
- 660 (C) a nonprofit or charitable institution; or
- 661 (d) recommending or participating in a foreclosure rescue that requires a person to:
- 662 (i) transfer title to real estate to the licensee or to a third-party with whom the
- 663 licensee has a business relationship or financial interest;
- 664 (ii) make a mortgage payment to a person other than the person's loan servicer; or
- 665 (iii) refrain from contacting the person's:
- 666 (A) lender;
- 667 (B) loan servicer;
- 668 (C) attorney;
- 669 (D) credit counselor; or
- 670 (E) housing counselor;
- 671 (23) taking or removing from the premises of a main office or a branch office, or otherwise
- 672 limiting a real estate brokerage's access to or control over, a record that:
- 673 (a) (i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated

- 674 independent contractor prepared; and
 675 (ii) is related to the business of:
 676 (A) the real estate brokerage; or
 677 (B) an associate broker, a branch broker, or a sales agent of the real estate
 678 brokerage; or
 679 (b) is related to the business administration of the real estate brokerage;
 680 (24) as a principal broker, placing a lien on real property, unless authorized by law;
 681 (25) as a sales agent or associate broker, placing a lien on real property for an unpaid
 682 commission or other compensation related to real estate brokerage services; or
 683 (26) failing to timely disclose to a buyer or seller an affiliated business arrangement, as
 684 defined in Section 31A-23a-1001, in accordance with the federal Real Estate Settlement
 685 Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.

686 Section 6. Section **61-2f-404** is amended to read:

687 **61-2f-404 . Disciplinary action -- Judicial review.**

- 688 (1) (a) On the basis of a violation of this chapter, the commission with the concurrence
 689 of the director, may issue an order:
 690 (i) imposing an educational requirement;
 691 (ii) imposing a civil penalty not to exceed the greater of:
 692 (A) except as provided in Subsection (1)(a)(ii)(B), \$5,000 for each violation; [or]
 693 (B) \$10,000 for each violation, if the person knew or should have known that the
 694 property owner was an individual 65 years old or older, or a vulnerable adult; or
 695 [(B)] (C) the amount of any gain or economic benefit derived from each violation;
 696 (iii) taking any of the following actions related to a license, registration, or certificate:
 697 (A) revoking;
 698 (B) suspending;
 699 (C) placing on probation;
 700 (D) denying the renewal, reinstatement, or application for an original license,
 701 registration, or certificate; or
 702 (E) in the case of denial or revocation of a license, registration, or certificate,
 703 setting a waiting period for an applicant to apply for a license, registration, or
 704 certificate under this title;
 705 (iv) issuing a cease and desist order;
 706 (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the
 707 commission finds that the person complies with court ordered restitution; or

- 708 (vi) doing any combination of Subsections (1)(a)(i) through (v).
- 709 (b) (i) If the commission with the concurrence of the director issues an order that
 710 orders a fine or educational requirements as part of a disciplinary action against a
 711 person, including a stipulation and order, the commission shall state in the order
 712 the deadline by which the person shall comply with the fine or educational
 713 requirements.
- 714 (ii) If a person fails to comply by the stated deadline:
- 715 (A) the person's license, registration, or certificate is automatically suspended:
- 716 (I) beginning the day specified in the order as the deadline for compliance; and
 717 (II) ending the day on which the person complies in full with the order; and
- 718 (B) if the person fails to pay a fine required by an order, the division may begin a
 719 collection process:
- 720 (I) established by the division, with the concurrence of the commission, by rule
 721 made in accordance with Title 63G, Chapter 3, Utah Administrative
 722 Rulemaking Act; and
- 723 (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- 724 (c) ~~[If a licensee is an active sales agent or active associate broker, the]~~ In a manner
 725 determined by the division, the division shall inform [the] a principal broker[-] :
- 726 (i) with whom [the] a licensee is affiliated of[-] :
- 727 (A) [the charge-] a complaint made to the division against the licensee that requires
 728 a written response from the licensee;
- 729 (B) a violation alleged against the licensee by the division;
- 730 (C) [and of]the time and place of any disciplinary hearing[-] regarding the
 731 licensee; and
- 732 (D) the resolution of a violation alleged described in Subsection (1)(c)(i)(B); and
- 733 (ii) upon inquiry from a principal broker regarding an affiliated licensee:
- 734 (A) disciplinary actions made by the division against the licensee for the past five
 735 years; and
- 736 (B) the resolution of the disciplinary actions described in Subsection (1)(c)(ii)(A).
- 737 (d) A person previously licensed under this chapter remains responsible for, and is
 738 subject to disciplinary action for, an act the person committed while the person was
 739 licensed in violation of this chapter or an administrative rule in effect at the time the
 740 person committed the act, regardless of whether the person is currently licensed.
- 741 (2) (a) An applicant, certificate holder, licensee, registrant, or person aggrieved,

- 742 including the complainant, may obtain agency review by the executive director and
743 judicial review of any adverse ruling, order, or decision of the division.
- 744 (b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and the
745 court finds that the state action was undertaken without substantial justification, the
746 court may award reasonable litigation expenses to the applicant, certificate holder,
747 registrant, or licensee as provided under Title 78B, Chapter 8, Part 5, Small Business
748 Equal Access to Justice Act.
- 749 (c) (i) An order, ruling, or decision of the division shall take effect and become
750 operative 30 days after the service of the order, ruling, or decision unless
751 otherwise provided in the order.
- 752 (ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division
753 may stay enforcement of an order, ruling, or decision in accordance with Section
754 63G-4-405.
- 755 (iii) An appeal is governed by the Utah Rules of Appellate Procedure.
- 756 (3) The commission and the director shall comply with the procedures and requirements of
757 Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.
758 Section 7. Section **61-2g-306** is amended to read:
759 **61-2g-306 . Renewal of license, certification, or registration.**
- 760 (1) To renew a license, certification, or registration, before the license, certification, or
761 registration expires, the holder of the license, certification, or registration shall submit to
762 the division in compliance with procedures set through the concurrence of the division
763 and the board:
- 764 (a) an application for renewal;
- 765 (b) a fee established by the division and the board, in accordance with Section 63J-1-504;
766 and
- 767 (c) evidence in the form prescribed by the division of having completed the continuing
768 education requirements for renewal specified in this chapter.
- 769 (2) (a) A license, certification, or registration expires if it is not renewed on or before its
770 expiration date.
- 771 (b) For a period of 30 days after the expiration date, a license, certification, or
772 registration may be reinstated upon:
- 773 (i) payment of a renewal fee and a late fee determined through the concurrence of the
774 division and the board; and
- 775 (ii) satisfying the continuing education requirements specified in Section 61-2g-307.

- 776 (c) After the 30-day period described in Subsection (2)(b), and until six months after the
 777 expiration date, a license, certification, or registration may be reinstated by:
- 778 (i) paying a renewal fee and a reinstatement fee determined through the concurrence
 779 of the division and the board; and
- 780 (ii) satisfying the continuing education requirements specified in Section 61-2g-307.
- 781 (d) After the six-month period described in Subsection (2)(c), and until one year after
 782 the expiration date, a license, certification, or registration may be reinstated by:
- 783 (i) paying a renewal fee and a reinstatement fee determined through the concurrence
 784 of the division and the board in accordance with Section 63J-1-504;
- 785 (ii) providing proof acceptable to the division, with the concurrence of the board, of
 786 the person having satisfied the continuing education requirements of Section
 787 61-2g-307; and
- 788 (iii) providing proof acceptable to the division, with the concurrence of the board, of
 789 the person completing 24 hours of continuing education:
- 790 (A) in addition to the requirements in Section 61-2g-307; and
- 791 (B) on a subject determined by the division by rule made in accordance with Title
 792 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 793 (e) The division shall relicense, recertify, or reregister a person who does not renew that
 794 person's license, certification, or registration within one year after the expiration date
 795 as prescribed for an original application.
- 796 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license,
 797 certification, or registration that would expire under Subsection (2)(a) except for the
 798 extension if:
- 799 (i) (A) the person complies with the requirements of this section to renew the
 800 license, certification, or registration; and
- 801 (B) the application for renewal remains pending at the time of the extension; or
- 802 (ii) at the time of the extension, there is pending under this chapter a disciplinary
 803 action.
- 804 (3) A person who is licensed, certified, or registered under this chapter shall notify the
 805 division of the following by sending the division a signed statement within 10 business
 806 days ~~[of]~~ after the day on which:
- 807 ~~[(a) a conviction of, or the entry of a plea in abeyance to:]~~
- 808 ~~[(i) a felony; or]~~
- 809 ~~[(ii) a misdemeanor involving financial services or a financial services-related business;~~

810 fraud, a false statement or omission, theft or wrongful taking of property, bribery,
811 perjury, forgery, counterfeiting, or extortion;]
812 [(b) the potential resolution of a felony or of a misdemeanor described in Subsection
813 (3)(a)(ii) by:]
814 [(i) a diversion agreement; or]
815 [(ii) any other agreement under which a criminal charge is suspended for a period of
816 time;]
817 [(e)] (a) the [suspension, revocation, surrender, cancellation, or denial of a] person's
818 professional license, certification, or registration [of the person,] is suspended,
819 revoked, surrendered, canceled, or denied, regardless of whether the license,
820 certification, or registration is issued by this state or another jurisdiction; or
821 [(d)] (b) [the entry of] a cease and desist order or a temporary or permanent injunction is
822 entered:
823 (i) against the person by a court or administrative agency; and
824 (ii) on the basis of:
825 (A) conduct or a practice involving an act regulated by this chapter; or
826 (B) conduct involving fraud, misrepresentation, or deceit.
827 (4) The board, with the concurrence of the division, shall enforce the reporting requirement
828 of Subsection (3) pursuant to Section 61-2g-502.
829 Section 8. Section **63I-2-261** is amended to read:
830 **63I-2-261 . Repeal dates: Title 61.**
831 [Section 61-2-204 is repealed on July 1, 2024].
832 Section 9. **Effective date.**
833 This bill takes effect on May 1, 2024.