

1 **REAL ESTATE AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kirk A. Cullimore**

5 House Sponsor: Calvin R. Musselman

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to real estate.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ amends provisions regarding the Division of Real Estate's issuance of a citation;
- 14 ▶ establishes criteria and parameters for temporary authorization to act as a mortgage
- 15 loan originator;
- 16 ▶ beginning January 1, 2020, requires a background check for certain licenses to
- 17 include ongoing monitoring through the Federal Bureau of Investigation's Next
- 18 Generation Identification System's Rap Back Service;
- 19 ▶ requires the Division of Real Estate to establish a fee for background checks;
- 20 ▶ permits the Securities Commission to make rules, with the concurrence of the
- 21 Division of Real Estate, in relation to background checks;
- 22 ▶ amends the grounds for disciplinary action against a sales agent, principal broker, or
- 23 association broker;
- 24 ▶ permits a real estate appraiser to conduct an evaluation; and
- 25 ▶ makes technical and conforming changes.

26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **61-2-203**, as last amended by Laws of Utah 2018, Chapter 213
- 33 **61-2c-201**, as last amended by Laws of Utah 2010, Chapter 379
- 34 **61-2f-204**, as last amended by Laws of Utah 2016, Chapter 25
- 35 **61-2f-401**, as last amended by Laws of Utah 2018, Chapter 213
- 36 **61-2g-102**, as last amended by Laws of Utah 2014, Chapter 350
- 37 **61-2g-205**, as last amended by Laws of Utah 2018, Chapter 213
- 38 **61-2g-301**, as last amended by Laws of Utah 2016, Chapter 384
- 39 **61-2g-304.5**, as enacted by Laws of Utah 2014, Chapter 350

40 ENACTS:

41 **61-2c-201.2**, Utah Code Annotated 1953



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

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

45 **61-2-203. Adjudicative proceedings -- Citation authority.**

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

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

49 [~~(a)~~] a citation, pursuant to ~~Subsection (3)~~;

50 [~~(b)~~] (a) a notice of agency action; or

51 [~~(c)~~] (b) a notice of formal or informal proceeding.

52 (3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not
53 apply to the issuance of a citation under Subsection (4), unless a licensee or another person
54 authorized by law to contest the validity or correctness of a citation commences an adjudicative
55 proceeding contesting the citation.

56 [~~(3)~~] (4) In addition to any other statutory penalty for a violation related to an
57 occupation or profession regulated under this title, the division may issue a citation to a person

- 58 who, upon inspection or investigation, the division concludes to have violated:
- 59 (a) Subsection 61-2c-201(1), which requires licensure;
- 60 (b) Subsection 61-2c-201(4), which requires entity licensure;
- 61 (c) Subsection 61-2c-205(3), which requires notification of a change in specified
- 62 information regarding a licensee;
- 63 (d) Subsection 61-2c-205(4), which requires notification of a specified legal [actions]
- 64 action;
- 65 (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division
- 66 within the required time period;
- 67 (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the
- 68 division;
- 69 (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
- 70 (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading
- 71 advertising;
- 72 (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed
- 73 work if unlicensed;
- 74 (j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a
- 75 quarterly report of condition;
- 76 (k) Subsection 61-2e-201(1), which requires registration;
- 77 (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;
- 78 (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;
- 79 (n) Subsection 61-2e-401(1)(c), which prohibits failure to respond to a division request
- 80 [~~by the division~~];
- 81 (o) Subsection 61-2f-201(1), which requires licensure;
- 82 (p) Subsection 61-2f-206(1), which requires entity registration;
- 83 (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;
- 84 (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;
- 85 (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated

86 with a principal broker;

87 (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records and
88 prohibits failing to make the specified records available for division inspection [by the
89 division];

90 (u) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive
91 advertising;

92 (v) Subsection 61-2f-401(20), which prohibits failing to respond to a division request;

93 (w) Subsection 61-2g-301(1), which requires licensure;

94 (x) Subsection 61-2g-405(3), which requires making records required to be maintained
95 available to the division;

96 (y) Subsection 61-2g-501(2)(c), which requires a person to respond to a division
97 request in an investigation within 10 days after the day on which the request is served;

98 [~~y~~] (z) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious
99 name;

100 [~~z~~] (aa) a rule made pursuant to any Subsection listed in this Subsection [~~3~~] (4);

101 [~~aa~~] (bb) an order of the division; or

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

103 [~~4~~] (5) (a) In accordance with Subsection [~~9~~] (10), the division may assess a fine
104 against a person for a violation of a provision listed in Subsection [~~3~~] (4), as evidenced by:

105 (i) an uncontested citation;

106 (ii) a stipulated settlement; or

107 (iii) a finding of a violation in an adjudicative proceeding.

108 (b) The division may, in addition to or in lieu of a fine under Subsection [~~4~~] (5)(a),
109 order the person to cease and desist from an activity that violates a provision listed in
110 Subsection [~~3~~] (4).

111 [~~5~~] (6) Except as provided in Subsection [~~7~~] (8)(d), the division may not use a
112 citation to effect a license:

113 (a) denial;

- 114 (b) probation;
- 115 (c) suspension; or
- 116 (d) revocation.
- 117 ~~[(6)]~~ (7) (a) A citation issued by the division shall:
- 118 (i) be in writing;
- 119 (ii) describe with particularity the nature of the violation, including a reference to the
- 120 provision of the statute, rule, or order alleged to have been violated;
- 121 (iii) clearly state that the recipient must notify the division in writing within 20
- 122 calendar days ~~[of service of]~~ after the day on which the citation is served if the recipient wishes
- 123 to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative
- 124 Procedures Act; and
- 125 (iv) clearly explain the consequences of failure to timely contest the citation or to make
- 126 payment of a fine assessed by the citation within the time period specified in the citation.
- 127 (b) The division may issue a notice in lieu of a citation.
- 128 ~~[(7)]~~ (8) (a) A citation becomes final:
- 129 (i) if within 20 calendar days ~~[from the service of the citation]~~ after the day on which
- 130 the citation is served, the person to whom the citation was issued fails to request a hearing to
- 131 contest the citation; or
- 132 (ii) if the director or the director's designee conducts a hearing pursuant to a timely
- 133 request for a hearing and issues an order finding that a violation has occurred.
- 134 (b) The division may extend, for cause, the 20-day period to contest a citation ~~[may be~~
- 135 ~~extended by the division for cause]~~.
- 136 (c) A citation that becomes the final order of the division due to a person's failure to
- 137 timely request a hearing is not subject to further agency review.
- 138 (d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on
- 139 probation the license of a licensee who fails to comply with a citation after the citation
- 140 becomes final.
- 141 (ii) The failure of a license applicant to comply with a citation after the citation

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

143 ~~[(8)]~~ (9) (a) The division may not issue a citation under this section after the expiration
144 of one year ~~[following the occurrence of a violation]~~ after the day on which the violation
145 occurs.

146 (b) The division may issue a notice to address a violation that is outside of the one-year
147 citation period.

148 ~~[(9)]~~ (10) The director or the director's designee shall assess a fine with a citation in an
149 amount that is no more than:

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

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

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

154 ~~[(10)]~~ (11) (a) An action for a first or second offense for which the division has not
155 issued a final order does not preclude the division from initiating a subsequent action for a
156 second or subsequent offense while the preceding action is pending.

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

160 ~~[(11)]~~ (12) (a) If a person does not pay a penalty, the director may collect the unpaid
161 penalty by:

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

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

164 (A) where the person resides; or

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

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

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

170 Section 2. Section **61-2c-201** is amended to read:

171 **61-2c-201. Licensure required of person engaged in the business of residential**
172 **mortgage loans.**

173 [~~(1) Unless exempt from this chapter under Section [61-2c-105](#), a person may not~~
174 ~~transact the business of residential mortgage loans without obtaining a license under this~~
175 ~~chapter.]~~

176 (1) (a) Except as provided in Subsection (1)(b), a person may not transact the business
177 of residential mortgage loans without first obtaining a license under this chapter.

178 (b) A person may transact the business of residential mortgage loans without first
179 obtaining a license under this chapter if the person:

180 (i) is exempt from this chapter under Section [61-2c-105](#); or

181 (ii) qualifies for temporary authority to act as a mortgage loan originator under Section
182 [61-2c-201.2](#).

183 (2) For purposes of this chapter, a person transacts the business of residential mortgage
184 loans in this state if:

185 (a) (i) the person engages in an act that constitutes the business of residential mortgage
186 loans; [~~and~~]

187 (ii) [~~(A)~~] the act described in Subsection (2)(a)(i) is directed to or received in this state;
188 and

189 [~~(B)~~] (iii) the real property that is the subject of the act described in Subsection (2)(a)(i)
190 is located in this state; or

191 (b) the person makes a representation [~~is made by the person~~] that the person transacts
192 the business of residential mortgage loans in this state.

193 (3) An individual who has an ownership interest in an entity required to be licensed
194 under this chapter is not required to obtain an individual license under this chapter unless the
195 individual transacts the business of residential mortgage loans.

196 (4) Unless otherwise exempted under this chapter, licensure under this chapter is
197 required of both:

198 (a) the individual who directly transacts the business of residential mortgage loans; and
199 (b) if the individual transacts business as an employee or agent of an entity or
200 individual, the entity or individual for whom the employee or agent transacts the business of
201 residential mortgage loans.

202 (5) (a) If an entity that is licensed to transact the business of residential mortgage loans
203 transacts the business of residential mortgage loans under an assumed business name, the entity
204 shall in accordance with rules made by the division:

205 (i) register the assumed name under this chapter; and
206 (ii) furnish proof that the assumed business name is filed with the Division of
207 Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business
208 Under Assumed Name.

209 (b) The division may charge a fee established in accordance with Section 63J-1-504 for
210 registering an assumed name [~~pursuant to~~] as described in this Subsection (5).

211 Section 3. Section 61-2c-201.2 is enacted to read:

212 **61-2c-201.2. Temporary authorization to act as a mortgage loan originator.**

213 (1) In accordance with the provisions of this section, an individual is temporarily
214 authorized to act as a mortgage loan originator if:

215 (a) an entity licensed to transact the business of residential mortgage loans employs the
216 individual;

217 (b) the individual submits an application for licensure as a mortgage loan originator in
218 accordance with Section 61-2c-202;

219 (c) the individual demonstrates that the individual:

220 (i) (A) is registered as a mortgage loan originator with a depository institution; and

221 (B) was registered in the nationwide database as a mortgage loan originator during the
222 one-year period before the day on which the individual submitted the application described in

223 Subsection (1)(b); or

224 (ii) was licensed as a mortgage loan originator in another state during the 30-day period
225 before the day on which the individual submitted the application described in Subsection

226 (1)(b); and
227 (d) the individual has not in any governmental jurisdiction:
228 (i) had an application for licensure as a mortgage loan originator denied;
229 (ii) had a mortgage loan originator license revoked or suspended;
230 (iii) been subject to, or served with, a cease and desist order in connection with a
231 residential mortgage loan transaction; or
232 (iv) been convicted of, pled guilty to, pled no contest to, or resolved by a plea in
233 abeyance agreement, a crime that would preclude the individual from licensure as a residential
234 mortgage loan originator, as provided by rule the division makes in accordance with Title 63G,
235 Chapter 3, Utah Administrative Rulemaking Act.
236 (2) Temporary authorization for an individual who meets the requirements described in
237 Subsection (1) to act as a mortgage loan originator:
238 (a) begins the day on which the individual submits an application in accordance with
239 Section [61-2c-202](#); and
240 (b) ends the day on which any of the following occurs:
241 (i) the individual withdraws the application described in Subsection (2)(a);
242 (ii) the division denies the application described in Subsection (2)(a);
243 (iii) the division grants the application described in Subsection (2)(a); or
244 (iv) 120 days pass after the day on which the individual submits an application for
245 registration in the nationwide database.
246 (3) A person employing an individual with temporary authorization under this section
247 is subject to the requirements of this chapter to the same extent as if the individual was licensed
248 in this state as a mortgage loan originator.
249 (4) An individual with temporary authorization under this section is subject to the
250 requirements of this chapter to the same extent as an individual licensed in this state as a
251 mortgage loan originator.
252 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
253 division may make rules regulating the temporary authority of an individual to act as a

254 mortgage loan originator in accordance with this section.

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

256 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

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

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

263 (c) A license issued under this Subsection (1) shall be issued for a period of not less
264 than two years as ~~[determined by]~~ the division determines with the concurrence of the
265 commission.

266 (d) (i) ~~[Any]~~ Each of the following applicants shall comply with this Subsection (1)(d):

267 (A) a new sales agent applicant;

268 (B) a principal broker applicant; ~~[or]~~ and

269 (C) an associate broker applicant.

270 (ii) An applicant described in this Subsection (1)(d) shall at the time the licensee files
271 an application:

272 (A) submit to the division fingerprint cards in a form acceptable to the ~~[division at the~~
273 ~~time the license application is filed; and]~~ Department of Public Safety;

274 (B) submit to the division a signed waiver in accordance with Subsection
275 53-10-108(4), acknowledging the registration of the applicant's fingerprints in the Federal
276 Bureau of Investigation Next Generation Identification System's Rap Back Service beginning
277 January 1, 2020;

278 ~~[(B)]~~ (C) consent to a criminal background check by the Utah Bureau of Criminal
279 Identification and the Federal Bureau of Investigation ~~[regarding the application.]; and~~

280 (D) pay the fee the division establishes in accordance with Subsection (1)(d)(vi).

281 ~~[(iii) The division shall request the Department of Public Safety to complete a Federal~~

282 ~~Bureau of Investigation criminal background check for each applicant described in this~~
283 ~~Subsection (1)(d) through the national criminal history system or any successor system.]~~

284 ~~(iv) The applicant shall pay the cost of the criminal background check and the~~
285 ~~fingerprinting.]~~

286 (iii) The Bureau of Criminal Identification shall:

287 (A) check the fingerprints an applicant submits under Subsection (1)(d)(ii) against the
288 applicable state, regional, and national criminal records databases, including, beginning
289 January 1, 2020, the Federal Bureau of Investigation Next Generation Identification System;

290 (B) report the results of the background check to the division;

291 (C) maintain a separate file of fingerprints that applicants submit under Subsection
292 (1)(d) for search by future submissions to the local and regional criminal records databases,
293 including latent prints;

294 (D) request that beginning January 1, 2020, the fingerprints be retained in the Federal
295 Bureau of Investigation Next Generation Identification System's Rap Back Service for search
296 by future submissions to national criminal records databases, including the Next Generation
297 Identification System and latent prints; and

298 (E) ensure that the division only receives notifications for an individual with whom the
299 division maintains permission to receive notifications.

300 (iv) (A) The division shall assess an applicant who submits fingerprints under
301 Subsection (1)(d) or (2)(g) a fee in an amount that the division sets in accordance with Section
302 [63J-1-504](#) for services that the division and the Bureau of Criminal Identification or another
303 authorized agency provide under Subsection (1)(d) or (2)(g).

304 (B) The Bureau of Criminal Identification may collect from the division money for
305 services provided under this section.

306 (v) Money paid to the division by an applicant for the cost of the criminal background
307 check is nonlapsing.

308 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
309 and with the concurrence of the division, the commission may make rules for the

310 administration of this Subsection (1)(d) and Subsection (2)(g) regarding criminal background
311 checks with ongoing monitoring.

312 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of
313 the criminal background check.

314 (ii) A license is immediately and automatically revoked if the criminal background
315 check discloses the applicant fails to accurately disclose a criminal history involving:

316 (A) the real estate industry; or

317 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
318 deceit.

319 (iii) If a criminal background check discloses that an applicant fails to accurately
320 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:

321 (A) shall review the application; and

322 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,
323 Utah Administrative Rulemaking Act, may:

324 (I) place a condition on a license;

325 (II) place a restriction on a license;

326 (III) revoke a license; or

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

328 (iv) (A) A person whose conditional license is automatically revoked under Subsection
329 (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii)
330 may have a hearing after the action is taken to challenge the action.

331 (B) The division shall conduct a hearing [~~shall be conducted~~] described in Subsection
332 (1)(d)(iv)(A) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

335 (A) the division; or

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

337 (vi) The [~~decision on~~] presiding officer shall decide whether relief from an action

338 under this Subsection (1)(e) [~~will be~~] is granted [~~shall be made by the presiding officer~~].

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

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

342 (I) did not occur; or

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

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

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

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

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

351 (2) (a) (i) A license expires if it is not renewed on or before [its] the expiration date of
352 the license.

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

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

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

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

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

365 (iv) The division may award credit to a licensee for a continuing education requirement

366 of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause,
367 including:

368 (A) military service; or

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

373 (b) For a period of 30 days after the day on which a license expires, the license may be
374 reinstated:

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

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

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

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

384 (c) After the 30-day period described in Subsection (2)(b), and until six months after
385 the day on which an active or inactive license expires, the license may be reinstated by:

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

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

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

391 (B) on a subject determined by the commission by rule with the concurrence of the
392 division and made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
393 Act; and

394 (iii) providing proof acceptable to the division and the commission of the licensee

395 having:

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

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

398 (d) After the six-month period described in Subsection (2)(c), and until one year after
399 the day on which an active or inactive license expires, the license may be reinstated by:

400 (i) paying a renewal fee and a late fee determined by the commission with the
401 concurrence of the division under Section [63J-1-504](#);

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

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

405 (B) on a subject determined by the commission by rule made in accordance with Title
406 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division;
407 and

408 (iii) providing proof acceptable to the division and the commission of the licensee

409 having:

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

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

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

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

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

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

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

421 (g) Beginning January 1, 2020, each applicant for renewal or reinstatement of a license

422 to practice as a sales agent, principal broker, or associate broker who is not already subject to
423 ongoing monitoring of the individual's criminal history shall, at the time the application for
424 renewal or reinstatement is filed:

425 (i) submit fingerprint cards in a form acceptable to the Department of Public Safety;

426 (ii) submit to the division a signed waiver in accordance with Subsection [53-10-108\(4\)](#),

427 acknowledging the registration of the applicant's fingerprints in the Federal Bureau of

428 Investigation Next Generation Identification System's Rap Back Service;

429 (iii) consent to a fingerprint background check by the Utah Bureau of Criminal

430 Identification and the Federal Bureau of Investigation; and

431 (iv) pay the fee the division establishes in accordance with Subsection (1)(d)(vi).

432 (3) (a) As a condition for the activation of an inactive license that was in an inactive
433 status at the time of the licensee's most recent renewal, the licensee shall supply the division
434 with proof of:

435 (i) successful completion of the respective sales agent or principal broker licensing
436 examination within six months before ~~[applying]~~ the day on which the licensee applies to
437 activate the license; or

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

441 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah
442 Administrative Rulemaking Act, subject to concurrence by the division, establish by rule:

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

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

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

446 **61-2f-401. Grounds for disciplinary action.**

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

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

- 450 (b) making an intentional misrepresentation;
- 451 (c) pursuing a continued and flagrant course of misrepresentation;
- 452 (d) making a false representation or promise through an agent, sales agent, advertising,
453 or otherwise; or
- 454 (e) making a false representation or promise of a character likely to influence,
455 persuade, or induce;
- 456 (2) acting for more than one party in a transaction without the informed consent of the
457 parties;
- 458 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
459 broker;
- 460 (b) representing or attempting to represent a principal broker other than the principal
461 broker with whom the person is affiliated; or
- 462 (c) representing as sales agent or having a contractual relationship similar to that of
463 sales agent with a person other than a principal broker;
- 464 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
465 to another and comes into the person's possession;
- 466 (b) commingling money described in Subsection (4)(a) with the person's own money;
467 or
- 468 (c) diverting money described in Subsection (4)(a) from the purpose for which the
469 money is received;
- 470 (5) paying or offering to pay valuable consideration, as defined by the commission, to a
471 person not licensed under this chapter, except that valuable consideration may be shared:
- 472 (a) with a principal broker of another jurisdiction; or
- 473 (b) as provided under:
 - 474 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
 - 475 (ii) Title 16, Chapter 11, Professional Corporation Act; or
 - 476 (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
477 appropriate pursuant to Section [48-3a-1405](#);

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

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

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

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

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

488 (b) the identification of real estate;

489 (c) the sale or rental price;

490 (d) money received in trust;

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

492 (f) any other information required by rule;

493 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
494 the purchase, sale, or rental is made for that person or for an undisclosed principal;

495 (11) being convicted, within five years of the most recent application for licensure, of a
496 criminal offense involving moral turpitude regardless of whether:

497 (a) the criminal offense is related to real estate; or

498 (b) the conviction is based upon a plea of nolo contendere;

499 (12) having, within five years of the most recent application for a license under this
500 chapter, entered any of the following related to a criminal offense involving moral turpitude:

501 (a) a plea in abeyance agreement;

502 (b) a diversion agreement;

503 (c) a withheld judgment; or

504 (d) an agreement in which a charge was held in suspense during a period of time when
505 the licensee was on probation or was obligated to comply with conditions outlined by a court;

- 506 (13) advertising the availability of real estate or the services of a licensee in a false,
507 misleading, or deceptive manner;
- 508 (14) in the case of a principal broker or a branch broker, failing to exercise reasonable
509 supervision over the activities of the principal broker's or branch broker's licensed or
510 unlicensed staff;
- 511 (15) violating or disregarding:
- 512 (a) this chapter;
- 513 (b) an order of the commission; or
- 514 (c) the rules adopted by the commission and the division;
- 515 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
516 estate transaction;
- 517 (17) any other conduct which constitutes dishonest dealing;
- 518 (18) unprofessional conduct as defined by statute or rule;
- 519 (19) having one of the following suspended, revoked, surrendered, or cancelled on the
520 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
521 truthfulness:
- 522 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 523 (b) another license, registration, or certificate to engage in an occupation or profession
524 issued by this state or another jurisdiction;
- 525 (20) failing to respond to a request by the division in an investigation authorized under
526 this chapter within 10 days after the day on which the request is served, including:
- 527 (a) failing to respond to a subpoena;
- 528 (b) withholding evidence; or
- 529 (c) failing to produce documents or records;
- 530 (21) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):
- 531 (a) providing a title insurance product or service without the approval required by
532 Section [31A-2-405](#); or
- 533 (b) knowingly providing false or misleading information in the statement required by

534 Subsection 31A-2-405(2);

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

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

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

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

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

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

547 (A) a government agency;

548 (B) the person's lender or loan servicer; or

549 (C) a nonprofit or charitable institution; or

550 (d) recommending or participating in a foreclosure rescue that requires a person to:

551 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
552 has a business relationship or financial interest;

553 (ii) make a mortgage payment to a person other than the person's loan servicer; or

554 (iii) refrain from contacting the person's:

555 (A) lender;

556 (B) loan servicer;

557 (C) attorney;

558 (D) credit counselor; or

559 (E) housing counselor;

560 (24) taking or removing from the premises of a main office or a branch office, or
561 otherwise limiting a real estate brokerage's access to or control over, a record that:

562 (a) (i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated
563 independent contractor prepared; and
564 (ii) is related to the business of:
565 (A) the real estate brokerage; or
566 (B) an associate broker, a branch broker, or a sales agent of the real estate brokerage; or
567 (b) is related to the business administration of the real estate brokerage;
568 ~~[(24)]~~ (25) as a principal broker, placing a lien on real property, unless authorized by
569 law; or
570 ~~[(25)]~~ (26) as a sales agent or associate broker, placing a lien on real property for an
571 unpaid commission or other compensation related to real estate brokerage services.

572 Section 6. Section **61-2g-102** is amended to read:

573 **61-2g-102. Definitions.**

574 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

597 (d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the
598 Appraisal Foundation.

599 (e) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
600 established in Section [61-2g-204](#).

601 (f) "Certified appraisal report" means a written or oral appraisal report that is certified
602 by a state-certified general appraiser or state-certified residential appraiser.

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

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

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

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

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

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

617 (ii) achieving a result specified by the person requesting the analysis, opinion, or

618 conclusion.

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

622 (k) "Division" means the Division of Real Estate of the Department of Commerce.

623 (l) "Evaluation" means an opinion on the market value of real property or real estate
624 that:

625 (i) is made in accordance with the Interagency Appraisal and Evaluation Guidelines;

626 and

627 (ii) is provided to a financial institution for use in a real estate related transaction for
628 which the regulations of the federal financial institutions regulatory agencies do not require an
629 appraisal.

630 ~~(h)~~ (m) "Executive director" means the executive director of the Department of
631 Commerce.

632 (n) "Federal financial institutions regulatory agencies" means:

633 (i) the Board of Governors of the Federal Reserve System;

634 (ii) the Federal Deposit Insurance Corporation;

635 (iii) the Office of the Comptroller of the Currency; and

636 (iv) the National Credit Union Administration.

637 ~~(m)~~ (o) "Federally related transaction" means a real estate related transaction that is
638 required by federal law or by federal regulation to be supported by an appraisal prepared by:

639 (i) a state-licensed appraiser; or

640 (ii) a state-certified appraiser.

641 (p) "Financial institution" means an insured:

642 (i) depository as defined in 12 U.S.C. Sec. 1813(c)(1); or

643 (ii) credit union as defined in 12 U.S.C. Sec. 1752(7).

644 (q) "Interagency Appraisal and Evaluation Guidelines" means the guidelines published
645 as Interagency Appraisal and Evaluation Guidelines, 75 Fed. Reg. 77,450 (Dec. 10, 2010), and

646 all amendments or updates thereto.

647 ~~[(n)]~~ (r) "Real estate" means an identified parcel or tract of land including
648 improvements if any.

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

651 ~~[(p)]~~ (t) "Real estate related transaction" means:

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

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

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

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

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

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

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

665 ~~[(u)]~~ (y) "Trainee" means an individual who:

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

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

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

671 ~~[(v)]~~ (z) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or
672 conclusion relating to the nature, quality, value, or utility of identified real estate or identified
673 real property that is prepared by a person who is employed or retained to act, or would be

674 perceived by third parties or the public as acting, as a disinterested third-party in rendering the
675 analysis, opinion, or conclusion.

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

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

681 Section 7. Section **61-2g-205** is amended to read:

682 **61-2g-205. Duties of board.**

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

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

686 (2) The board shall:

687 (a) determine the experience and education requirements appropriate for a person
688 licensed under this chapter;

689 (b) determine the experience and education requirements appropriate for a person
690 certified under this chapter:

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

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

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

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

696 (ii) clerical staff; and

697 (iii) a person who:

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

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

701 (d) determine the procedures for a trainee to register and to renew a registration with

702 the division; and

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

705 (3) The experience and education requirements determined by the board for a person
706 licensed or certified under this chapter shall meet or exceed the minimum criteria established
707 by the Appraisal Qualification Board.

708 (4) The board shall:

709 (a) determine the continuing education requirements appropriate for the renewal of a
710 license, certification, or registration issued under this chapter that meet or exceed the minimum
711 criteria established by the Appraisal Qualification Board;

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

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

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

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

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

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

723 (c) (i) The board may by rule made in accordance with Title 63G, Chapter 3, Utah
724 Administrative Rulemaking Act, and Section 61-2g-403, and with the concurrence of the
725 division, provide for an exemption from a provision of the Uniform Standards of Professional
726 Appraisal Practice for:

727 (A) an activity engaged in on behalf of a governmental entity; or

728 (B) the act of an individual licensed or certified in accordance with this chapter
729 providing an evaluation.

730 (ii) In providing an exemption as described in Subsection (5)(c)(i)(B), the board may
731 not exempt an individual from the following provisions of the Uniform Standards of
732 Professional Appraisal Practice:

- 733 (A) the Ethics Rule;
- 734 (B) the Record Keeping Rule;
- 735 (C) the Competency Rule; and
- 736 (D) the Scope of Work Rule.

737 (6) (a) The board shall conduct an administrative hearing, not delegated by the board to
738 an administrative law judge, in connection with a disciplinary proceeding under Section
739 [61-2g-504](#) concerning:

- 740 (i) a person required to be licensed, certified, or registered under this chapter; and
- 741 (ii) the person's failure to comply with this chapter and the Uniform Standards of
742 Professional Appraisal Practice as adopted under Section [61-2g-403](#).

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

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

748 (7) A member of the board is immune from a civil action or criminal prosecution for a
749 disciplinary proceeding concerning a person required to be registered, licensed, certified, or
750 approved as an expert under this chapter if the action is taken without malicious intent and in
751 the reasonable belief that the action taken was taken pursuant to the powers and duties vested
752 in a member of the board under this chapter.

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

- 756 (i) original licensure, certification, or registration; and
- 757 (ii) renewal licensure, certification, or registration.

758 (b) The board may delegate to the division the authority to:
759 (i) review a class or category of applications for an original or renewed license,
760 certification, or registration;
761 (ii) determine whether an applicant meets the qualifications for licensure, certification,
762 or registration;
763 (iii) conduct any necessary hearing on an application for an original or renewed license,
764 certification, or registration; and
765 (iv) approve, approve with condition or restriction, or deny an application for an
766 original or renewed license, certification, or registration.

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

773 (d) If the board delegates to the division the authority to approve, approve with a
774 condition or restriction, or deny an application without the concurrence of the board under
775 Subsection (8)(b), and the division approves with a condition or restriction, or denies, an
776 application for licensure, certification, or registration, the applicant may, in accordance with
777 Title 63G, Chapter 4, Administrative Procedures Act, petition the board for a de novo review
778 of the application within 30 days after the day on which the division issues the order approving
779 with a condition or restriction, or denying, the applicant's application.

780 (e) If the board approves with a condition or restriction, or denies, an applicant's
781 application for licensure, certification, or registration after a de novo review under Subsection
782 (8)(d), the applicant may, in accordance with Title 63G, Chapter 4, Administrative Procedures
783 Act, petition the executive director for review of the board's approval with a condition or
784 restriction, or denial, within 30 days after the day on which the board issues the order
785 approving with a condition or restriction, or denying, the applicant's application.

786 Section 8. Section **61-2g-301** is amended to read:

787 **61-2g-301. License or certification required.**

788 (1) Except as provided in Subsection (2), it is unlawful for a person to prepare, for
789 valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform
790 a consultation service relating to real estate or real property in this state without first being
791 licensed or certified in accordance with this chapter.

792 (2) This section does not apply to:

793 (a) a principal broker, associate broker, or sales agent as defined by Section [61-2f-102](#)
794 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives
795 an opinion regarding the value of real estate:

796 (i) to a potential seller or third-party recommending a listing price of real estate; or

797 (ii) to a potential buyer or third-party recommending a purchase price of real estate;

798 (b) an employee of a company who states an opinion of value or prepares a report
799 containing value conclusions relating to real estate or real property solely for the company's
800 use;

801 (c) an official or employee of a government agency while acting solely within the scope
802 of the official's or employee's duties, unless otherwise required by Utah law;

803 (d) an auditor or accountant who states an opinion of value or prepares a report
804 containing value conclusions relating to real estate or real property while performing an audit;

805 (e) an individual, except an individual who is required to be licensed or certified under
806 this chapter, who states an opinion about the value of property in which the individual has an
807 ownership interest;

808 (f) an individual who states an opinion of value if no consideration is paid or agreed to
809 be paid for the opinion and no other party is reasonably expected to rely on the individual's
810 appraisal expertise;

811 (g) an individual, such as a researcher or a secretary, who does not render significant
812 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,
813 opinion, or conclusion;

814 (h) an attorney authorized to practice law in any state who, in the course of the
815 attorney's practice or tax appeal services, uses an appraisal report governed by this chapter or
816 who states an opinion of the value of real estate; or

817 (i) an individual who is not an appraiser who presents or provides a price estimate,
818 evidence, or property tax information solely for a property tax appeal in accordance with
819 Section [59-2-1017](#).

820 (3) An opinion of value or report containing value conclusions exempt under
821 Subsection (2) may not be referred to as an appraisal.

822 (4) Except as provided in Subsection (2), to prepare or cause to be prepared in this state
823 an appraisal, an appraisal report, or a certified appraisal report, an individual shall:

824 (a) apply in writing for licensure or certification as provided in this chapter in the form
825 the division may prescribe; and

826 (b) become licensed or certified under this chapter.

827 (5) Subject to rules made in accordance with Section [61-2g-205](#), a person licensed or
828 certified under this chapter may provide an evaluation.

829 Section 9. Section **61-2g-304.5** is amended to read:

830 **61-2g-304.5. Background checks.**

831 (1) An individual applying for licensure, certification, or registration under this chapter
832 shall, at the time the individual files an application for licensure:

833 (a) submit to the division, with the individual's application, a fingerprint card in a form
834 acceptable to the ~~[division; and]~~ Department of Public Safety;

835 (b) submit to the division a signed waiver in accordance with Subsection [53-10-108\(4\)](#),
836 acknowledging the registration of the individual's fingerprints in the Federal Bureau of
837 Investigation Next Generation Identification System's Rap Back Service beginning January 1,
838 2020;

839 ~~[(b)]~~ (c) consent to a criminal background check by:

840 (i) the Utah Bureau of Criminal Identification; and

841 (ii) the Federal Bureau of Investigation~~[-];~~ and

842 (d) pay the fee the division establishes in accordance with Subsection (3)(d).
843 (2) Beginning January 1, 2020, each applicant for renewal or reinstatement of a license,
844 certification, or registration who does not have the applicant's fingerprints registered in the
845 Federal Bureau of Investigation Next Generation Identification System's Rap Back Service
846 shall, at the time the application for renewal or reinstatement is filed:
847 (a) submit to the division, with the individual's application, a fingerprint card in a form
848 acceptable to the Department of Public Safety;
849 (b) submit to the division a signed waiver in accordance with Subsection 53-10-108(4),
850 acknowledging the registration of the individual's fingerprints in the Federal Bureau of
851 Investigation Next Generation Identification System's Rap Back Service;
852 (c) consent to a fingerprint background check by:
853 (i) the Utah Bureau of Criminal Identification; and
854 (ii) the Federal Bureau of Investigation; and
855 (d) pay the fee the division establishes in accordance with Subsection (3)(d).
856 (3) (a) The Bureau of Criminal Identification shall:
857 (i) check the fingerprints an applicant submits under Subsection (1) or (2) against the
858 applicable state, regional, and national criminal records databases, including, beginning
859 January 1, 2020, the Federal Bureau of Investigation Next Generation Identification System;
860 (ii) report the results of the background check to the division;
861 (iii) maintain a separate file of fingerprints that individuals submit under this section
862 for search by future submissions to the local and regional criminal records databases, including
863 latent prints;
864 (iv) request, beginning January 1, 2020, that the fingerprints be retained in the Federal
865 Bureau of Investigation Next Generation Identification System's Rap Back Service for search
866 by future submissions to national criminal records databases, including the Next Generation
867 Identification System and latent prints; and
868 (v) ensure that the division only receives notifications for an individual with whom the
869 division maintains permission to receive notifications.

870 (b) (i) The division shall assess an applicant who submits fingerprints under this
871 section a fee in an amount that the division sets in accordance with Section 63J-1-504 for
872 services that the division and the Bureau of Criminal Identification or another authorized
873 agency provide under this section.

874 (ii) The Bureau of Criminal Identification may collect from the division money for
875 services provided under this section.

876 ~~[(2) The division shall request that the Department of Public Safety complete a Federal~~
877 ~~Bureau of Investigation criminal background check for each applicant through the national~~
878 ~~criminal history system or any system that succeeds the national criminal history system.]~~

879 ~~[(3) The applicant shall pay the cost of:]~~

880 ~~[(a) the fingerprint card described in Subsection (1)(a); and]~~

881 ~~[(b) a criminal background check.]~~

882 (4) (a) A license, certification, ~~[or]~~ registration, or renewal issued under this chapter is
883 conditional pending completion of a criminal background check.

884 (b) A license, certification, ~~[or]~~ registration, or renewal issued under this chapter is
885 immediately and automatically revoked if a criminal background check reveals that the
886 applicant failed to accurately disclose a criminal history that:

887 (i) relates to the appraisal industry; or

888 (ii) includes a felony conviction based on fraud, misrepresentation, or deceit.

889 (c) If a criminal background check reveals that an applicant failed to accurately
890 disclose a criminal history other than a type described in Subsection (4)(b), the division shall
891 review the application and, in accordance with rules made by the division pursuant to Title
892 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

893 (i) place one or more conditions on the license, certification, or registration;

894 (ii) place one or more restrictions on the license, certification, or registration;

895 (iii) revoke the license, certification, or registration; or

896 (iv) refer the application to the board for a decision.

897 (d) An individual whose conditional license, certification, or registration is

898 automatically revoked under Subsection (4)(b) or whose license, certification, or registration is
899 conditioned, restricted, or revoked under Subsection (4)(c) may appeal the action in a hearing
900 conducted by the board in accordance with Title 63G, Chapter 4, Administrative Procedures
901 Act.

902 (e) The board may delegate to the division or an administrative law judge the authority
903 to conduct a hearing described in Subsection (4)(d).

904 (f) The board, the division, or an administrative law judge may reverse an automatic
905 revocation under Subsection (4)(b) only if:

906 (i) the criminal history upon which the revocation was based did not occur or is the
907 criminal history of another individual;

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

910 (iii) the division failed to follow the prescribed procedure for the revocation.

911 (5) (a) If an individual's conditional license, certification, or registration is revoked
912 under Subsection (4) and the individual does not appeal the revocation in accordance with
913 Subsection (4)(d), the individual may not apply for a new certification, license, or registration
914 under this chapter for a period of 12 months after the day on which the conditional license,
915 certification, or registration is revoked.

916 (b) If an individual's conditional license, certification, or registration is revoked, the
917 individual appeals that revocation in accordance with Subsection (4)(d), and the revocation is
918 upheld, the individual may not apply for a new license, certification, or registration under this
919 chapter for a period of 12 months after the day on which the decision from the appeal is issued.

920 (6) The board may delegate to the division the authority to make a decision on whether
921 relief from a revocation should be granted.

922 (7) Money an applicant pays for the cost of the criminal background check is
923 nonlapsing.

924 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
925 with the concurrence of the division, the commission may make rules for the administration of

926 this section regarding criminal background checks with ongoing monitoring.