



STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE

REAL ESTATE ADMINISTRATIVE RULES

June 21, 2010

R162-1. Authority and Definitions.

R162-1-1. Authority.

1.1. The following administrative Rules, applicable to the Division of Real Estate, Department of Commerce have been established under the authority granted by Section 61-2-5.5, et seq. *03/03/1994*

1.1.1. The Division shall charge and collect fees for the (a) issuance of a new or duplicate license; (b) issuance of license history or certifications; (c) issuance of certified copies of official documents, orders, and other papers and transcripts; (d) certification of real estate schools, courses and instructors; and (e) costs of administering other duties. *03/17/1994*

1.1.2. The authority to collect the above fees is authorized by Section 61-2-9(5) and Section 61-2a- 4. *03/17/1994*

R162-1-2. Definitions.

1.2. Terms used in these rules are defined as follows:

1.2.1. Active Licensee: One who: (a) has paid all applicable license fees; and (b) is affiliated with a principal brokerage. *12/17/1990*

1.2.2. Branch Manager: An associate broker who manages a branch office under the supervision of the principal broker. *12/17/1990*

1.2.3. Branch Office: A real estate office affiliated with and operating under the same name as a Principal Brokerage but located at an address different from the main office. *12/17/1990*

1.2.4. Business Opportunity: The sale, lease, or exchange of any business which includes an interest in real estate. *12/17/1990*

1.2.5. Brokerage: A real estate sales brokerage or a property management company. *04/23/1998*

1.2.6. Certification: The authorization issued by the Division to: (a) establish and operate a real estate school which provides courses approved for licensing requirements, (b) provide courses approved for renewal requirements, or (c) function as a real estate instructor. *04/23/1998*

1.2.7. Company Registration: A Registration issued to a corporation, partnership, Limited Liability Company, association or other legal entity of a real estate brokerage. A Company Registration is also issued to an individual or an individual's professional corporation. *04/23/1998*

1.2.8. Continuing Education: Professional education required as a condition of renewal in accordance with Subsection 61-2-9(2)(a). *03/03/1994*

1.2.9. Credit hour: 50 minutes of instruction within a 60 minute period. *05/30/2007*

1.2.10 DBA (doing business as): The authority issued by the Division of Corporations and Commercial Code to transact business under an assumed name. *05/30/2007*

1.2.11. Distance Education: education in which the instruction does not take place in a traditional classroom setting, but through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including computer conferencing, video conferencing, interactive audio, interactive computer software, Internet-based instruction, and other interactive online courses. *05/30/2007*

1.2.12. Expired License: A license will be deemed "expired" when the licensee fails to pay the fees due by the close of business on the expiration date. If the expiration date falls on a Saturday, Sunday or holiday the effective date of expiration shall be the next business day. *12/17/1990*

1.2.13. Inactivation: The placing of a license on an inactive status, either voluntarily or involuntarily. *12/17/1990*

1.2.13.1. Voluntary inactivation means the process initiated by an active licensee terminating affiliation with a principal brokerage. *12/17/1990*

1.2.13.2. Involuntary inactivation means the process of (a) inactivation of a sales agent or associate broker license resulting from the suspension, revocation, or non-renewal of the license of the licensee's principal broker, or death of the licensee's principal broker, or (b) inactivation of a sales agent or associate broker license by a principal broker when the licensee is unavailable to execute the transfer forms. *03/03/1994*

1.2.14. Inactive Licensee: One who: (a) has paid all applicable license fees; and (b) is not affiliated with a principal brokerage. *12/17/1990*

1.2.15. Net listing means a listing wherein the amount of real estate commission is the difference between the selling price of the property and a minimum price set by the seller. *09/03/1991*

1.2.16. Non-resident Licensee: A person who holds a Utah real estate principal broker, associate broker, or sales agent license whose primary residence is in a jurisdiction other than Utah. *04/23/1998*

1.2.17. Principal Brokerage: The main real estate or property management office of a principal broker. *12/17/1990*

1.2.18. Property Management: The business of providing services relating to the rental or leasing of real property, including: advertising, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, supervising repairs and maintenance, collecting and disbursing rents. *03/03/1994*

1.2.19 Provider: any person, professional organization, or other entity that is approved by the Division of Real Estate to teach Division-approved continuing education courses. *05/30/2007*

1.2.20. Regular Salaried Employees: For purposes of this Chapter, "regular salaried employee" shall mean an individual employed other than on a contract basis, who has withholding taxes taken out by the employer. *12/17/1990*

1.2.21. Reinstatement: To restore to active or inactive status, a license which has expired or been suspended. *12/17/1990*

1.2.22. Reissuance: The process by which a licensee may obtain a license following revocation. *12/17/1990*

1.2.23. Renewal: To extend an active or inactive license for an additional licensing period. *12/17/1990*

1.2.24 School: For the purposes of Rules R162-8 and R162-9, "school" includes:

- (a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education; *05/30/2007*
- (b) Any community college, vocational-technical school, state or federal agency or commission; *05/30/2007*
- (c) Any nationally recognized real estate organization, any Utah real estate organization, or any local real estate organization which has been approved by the Real Estate Commission; and *05/30/2007*
- (d) Any proprietary real estate school. *05/30/2007*

1.2.25 Traditional Education: education in which instruction takes place between an instructor and students where all are physically present in the same classroom. *05/30/2007*

R162-2. Exam and License Application Requirements.

R162-2-1. Qualifications for Licensure and Exam Application.

2.1.1 Minimum Age. All applicants shall be at least 18 years of age. *08/17/2005*

2.1.2 Formal Education Minimum. All applicants shall have at least a high school diploma, G.E.D., or equivalent as determined by the Commission. *08/17/2005*

2.1.3 Prelicensing Education. All applicants shall have completed any required prelicensing education before applying to sit for a licensing examination. *08/17/2005*

2.1.4 Exam application. All applicants who desire to sit for a licensing examination shall deliver an application to sit for the examination, together with the applicable examination fee, to the testing service designated by the Division. If the applicant fails to take the examination when scheduled, the fee will be forfeited. *08/17/2005*

2.1.4.1. Applicants previously licensed out-of-state.

(a) If an applicant is now and has been actively licensed for the preceding two years in another state which has substantially equivalent licensing requirements and is either a new resident or a non-resident of this state, the Division shall waive the national portion of the exam. *08/17/2005*

(b) If an applicant has been on an inactive status for any portion of the past two years he may be required to take both the national and Utah state portions of the exam. *08/17/2005*

R162-2-2. Licensing Procedure.

2.2. Within 90 days after successful completion of the exam, the applicant shall return to the Division each of the following: *09/14/0992*

2.2.1. A report of the examination indicating that both portions of the exam have been passed within a six-month period of time. *06/04/1996*

2.2.2. The license application form required by the Division. The application form shall include the licensee's business and home address. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address. *03/05/1991*

2.2.3. The non-refundable fees which will include the appropriate license fee as authorized by Section 61-2-9(5) and the Recovery Fund fee as authorized by Section 61-2a-4. *06/04/1996*

2.2.4. Documentation indicating successful completion of the required education taken within the year prior to licensing. If the applicant has been previously licensed in another state which has substantially equivalent licensing requirements, he may apply to the Division for a waiver of all or part of the educational requirement. *12/17/1990*

2.2.4.1. Candidates for the license of sales agent will successfully complete 90 classroom hours of approved study in principles and practices of real estate. Experience will not satisfy the education requirement. Membership in the Utah State Bar will waive this requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application. *10/24/2005*

2.2.4.2. Candidates for the license of associate broker or principal broker will successfully complete 120 classroom hours of study curriculum approved by the Commission consisting of 45 hours of broker principles, 45 hours of broker practices, and 30 hours of Utah law and testing. Experience will not satisfy the education requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application. 10/24/2005

2.2.5. The principal broker and associate broker applicant will submit the forms required by the Division documenting a minimum of three years licensed real estate experience and a total of at least 60 points accumulated within the five years prior to licensing. A minimum of two years (24 months) and at least 45 points will be accumulated from Tables I and/or II. The remaining 15 points may be accumulated from Tables I, II or III. 06/03/1999

TABLE I - REAL ESTATE

TRANSACTIONS

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:

- | | |
|---------------------------------|------------|
| (a) One unit dwelling | 2.5 points |
| (b) Two- to four-unit dwellings | 5 points |
| (c) Apartments, 5 units or over | 10 points |
| (d) Improved lot | 2 points |
| (e) Vacant land/subdivision | 10 points |

COMMERCIAL

- | | |
|---------------------------------|-----------|
| (f) Hotel or motel | 10 points |
| (g) Industrial or warehouse | 10 points |
| (h) Office building | 10 points |
| (i) Retail building | 10 points |
| (j) Leasing of commercial space | 5 points |

TABLE II - PROPERTY MANAGEMENT

RESIDENTIAL

- | | |
|-----------------------|--------------|
| (a) Each unit managed | .25 pt/month |
|-----------------------|--------------|

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building

- | | |
|--|------------|
| (b) Each contract OR each separate property address or location for which licensee has direct responsibility | 1 pt/month |
|--|------------|

2.2.6. The Principal Broker may accumulate additional experience points by having participated in real estate related activities such as the following:

TABLE III - OPTIONAL

- | | |
|----------------------|------------|
| Real Estate Attorney | 1 pt/month |
|----------------------|------------|

CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month 04/23/1998

2.2.7. If the review of an application has been performed by the Division and the Division has denied the application based on insufficient experience, and if the applicant believes that the Experience Points Tables do not adequately reflect the amount of the applicant's experience, the applicant may petition the Real Estate Commission for reevaluation by making a written request within 30 days after the denial stating specific grounds upon which relief is requested. The Commission shall thereafter consider the request and issue a written decision. 04/23/1998

2.2.8. An applicant previously licensed in another state will provide a written record of his license history from that state and documentation of disciplinary action, if any, against his license. 12/17/1990

2.2.9. Qualifications of License Applicants. An applicant for a new license may not: 06/21/2006

(a) have been convicted of, entered a plea in abeyance to, or completed a sentence of confinement on account of a felony within five years preceding the application; or 05/25/2010

(b) have been convicted of or completed any sentence of confinement on account of a misdemeanor involving fraud, misrepresentation, theft, or dishonesty within the three-year period preceding date of the application. 05/25/2010

2.2.10 Qualifications for Renewal. An applicant for license renewal, or for reinstatement of an expired license, may not have, since the last date of licensure:

(a) been convicted of a felony; or 05/25/2010

(b) entered into a plea in abeyance agreement relative to a felony charge involving fraud, misrepresentation, or deceit; or 05/25/2010

(c) had, with regard to activities requiring a real estate license, a finding of fraud, misrepresentation or deceit entered against the applicant by a court of competent jurisdiction or a government agency, unless the finding was explicitly considered by the Division in a previous application process. 05/25/2010

2.2.11 Determining fitness for licensure. In determining whether an applicant who has not been disqualified by Subsections 2.2.9 or 2.2.10 meets the requirements of honesty, integrity, truthfulness, reputation and competency required for a new or a renewed license, the Commission and the Division will consider information they consider necessary to make this determination, including the following: 06/21/2006

2.2.11.1. Whether an applicant has been denied a license to practice real estate, property management, or any regulated profession, business, or vocation, or

whether any license has been suspended or revoked or subjected to any other disciplinary sanction by this or another jurisdiction; *06/21/2006*

2.2.11.2. Whether an applicant has been guilty of conduct or practices which would have been grounds for revocation or suspension of license under Utah law had the applicant then been licensed; *06/21/2006*

2.2.11.3. Whether a civil judgment has been entered against the applicant based on a real estate transaction, and whether the judgment has been fully satisfied; *06/21/2006*

2.2.11.4. Whether a civil judgment has been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied. *06/21/2006*

2.2.11.5 Whether an applicant has ever been convicted of, or entered a plea in abeyance to, any criminal offense, or whether any criminal charges against the applicant have ever been resolved by a diversion agreement or similar disposition; *06/21/2006*

2.2.11.6. Whether restitution ordered by a court in a criminal case has been fully satisfied; *06/21/2006*

2.2.11.7. Whether the parole or probation in a criminal case or the probation in a licensing action has been completed and fully served; and *06/21/2006*

2.2.11.8. Whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a license, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency. *06/21/2006*

R162-2-3. Company Registration.

2.3.1. A Principal Broker shall register with the Division the name under which his real estate brokerage or property management company will operate. Registration will require payment of applicable non-refundable fees and evidence that the name of the new company has been approved by the Division of Corporations, Department of Commerce. *04/23/1998*

2.3.1.1. The real estate brokerage shall at all times have affiliated with it a principal broker who shall demonstrate that he is authorized to use the company name. *04/23/1998*

2.3.1.2. Misleading or deceptive business names. The Division will not accept a proposed business name when there is a substantial likelihood that the public will

be misled by the name into thinking that they are not dealing with a licensed real estate brokerage or property management company. *04/23/1998*

2.3.2. Registration of Entities Operating a Principal Brokerage. *04/23/1998*

2.3.2.1. A corporation, partnership, Limited Liability Company, association or other entity which operates a principal brokerage shall comply with R162-2.3 and the following conditions: *04/23/1998*

2.3.2.2. Individuals associated with the entity shall not engage in activity which requires a real estate license unless they are affiliated with the principal broker and licensed with the Division. Upon a change of principal broker, the entity shall be responsible to insure that the outgoing and incoming principal brokers immediately provide to the Division, on forms required by the Division, evidence of the change. *04/23/1998*

2.3.2.2.1. If the outgoing principal broker is not available to properly execute the form required to effect the change of principal brokers, the change may still be made provided a letter advising of the change is mailed by the entity by certified mail to the last known address of the outgoing principal broker. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form when it is submitted to the Division. *04/23/1998*

2.3.2.3. If the change of members in a partnership either by the addition or withdrawal of a partner creates a new legal entity, the new entity cannot operate under the authority of the registration of the previous partnership. The dissolution of a corporation, partnership, Limited Liability Company, association or other entity which has been registered terminates the registration. The Division shall be notified of any change in a partnership or dissolution of a corporation which has registered prior to the effective date of the change. *04/23/1998*

R162-2-4. Licensing of Non-Residents.

2.4. In addition to meeting the requirements of rules 2.1 and 2.2, an applicant living outside of the state of Utah may be issued a license in Utah by successfully completing specific educational hours required by the Division with the concurrence of the Commission, and by passing the real estate licensing examination. The applicant shall also meet each of the following requirements: *06/04/1996*

2.4.1. If the applicant is an associate broker or sales agent, the principal broker with whom he will be affiliated shall hold an active license in Utah. *06/04/1996*

2.4.2. If the applicant is a principal broker, he shall establish a real estate trust account in this state. He shall also maintain all office records in this state at a principle business location as outlined in R162- 4.1. *06/04/1996*

2.4.3. The application for licensure in Utah shall be accompanied by an irrevocable written consent allowing service of process on the Commission or the Division. *06/04/1996*

2.4.4. The applicant shall provide a written record of his license history, if any, and documentation of disciplinary action, if any, against his license. *06/04/1996*

R162-2-5. Reciprocity.

2.5. The Division, with the concurrence of the Commission, may enter into specific reciprocity agreements with other states on the same basis as Utah licensees are granted licenses by those states. *12/17/1990*

R162-3. License Status Change.

R162-3-1. Status Changes.

3.1. A licensee must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate non-refundable fees are received by the Division. Notice must be on the forms required by the Division. *06/04/1996*

3.1.1. Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license. *12/17/1990*

3.1.2. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address. *03/05/1991*

3.1.3. Change of name of a brokerage must be accompanied by evidence that the new name has been approved by the Division of Corporations, Department of Commerce. *12/17/1990*

3.1.4. Change of Principal Broker of a real estate brokerage which is a sole proprietorship, requires closure of the registered entity. The new principal broker shall activate the Registered Company and provide proof from the Division of Corporations of the authorization to use the DBA. Change cards will be required for the terminating Principal Broker, new Principal Broker and all licensees affiliated with the brokerage. *04/23/1998*

3.1.5. Change of a Principal Broker within an entity which is not a sole proprietorship requires written notice from the entity signed by both the terminating Principal Broker and the new Principal Broker. *04/23/1998*

R162-3-2. Unavailability of Licensee.

3.2. If a licensee is not available to properly execute the form required for a status change, the status change may still be made provided a letter advising of the change is mailed by certified mail to the last known address of the unavailable licensee. A verified copy of the letter and proof of mailing by certified mail must be attached to the form when it is submitted to the Division. *03/05/1991*

R162-3-3. Transfers.

3.3. Prior to transferring from one principal broker to another principal broker, the licensee must mail or deliver to the Division written notice of the change on the form required by the Division. *04/23/1998*

R162-3-4. Inactivation.

3.4. To voluntarily inactivate a license, the licensee must deliver or mail to the Division a written request for the change signed by both the licensee and principal broker. *04/23/1998*

3.4.1. Prior to placing a principal broker license on an inactive status, a principal broker must provide written notice to each licensee affiliated with the principal broker of that licensing status change. Evidence of that written notice must be provided to the Division in order to process the status change. The inactivation of the license of a principal broker will also cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change. *07/30/2008*

3.4.2. The non-renewal, suspension, or revocation of the license of a principal broker will cause the licenses of affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change. *06/16/2010*

3.4.2.1. When a principal broker is notified that the principal broker's license will be suspended or revoked, the principal broker must, prior to the effective date of the suspension or revocation, provide written notice to each licensee affiliated with the principal broker of that status change. In addition, the Division shall send written notice to each sales agent, associate broker, or branch broker of the effective date of inactivation and the process for transfer. *07/30/2008*

3.4.3. The principal broker may involuntarily inactivate the license of the sales agent or associate broker by complying with R162-3.2. *03/03/1994*

R162-3-5. Activation.

3.5. Licensees changing to active status must submit to the Division the applicable non-refundable activation fee, a request for activation in the form required by the Division, and, if the license was on inactive status at the time of last license renewal, proof of completion of the examination within six months prior to applying to activate or proof of completion of

the 18 hours of continuing education that the licensee would have been required to complete in order to renew on active status. If a licensee last renewed on inactive status and applies to activate the license at the time of license renewal, the licensee shall be required to complete the 18 hours of continuing education required to renew but shall not be required to complete additional continuing education in order to activate the license. *06/16/2010*

3.5.1 Continuing Education for Activation. The 18 hours of continuing education required to activate a license shall be made up of at least 9 hours of "core" courses in subjects specified in Subsection R162-9.2.1. The balance of the 18 hours of continuing education may be "elective" courses in the subjects listed in Subsection R162-9.2.2. *06/16/2010*

3.5.1.1 To qualify as continuing education for activation, all courses submitted must have been completed within one year before activation. *05/20/2004*

3.5.1.2 Continuing education that was submitted to activate a license may not be used again toward the continuing education required on the licensee's next renewal. *05/20/2004*

R162-3-6. Renewal and Reinstatement.

3.6.1 Licenses are valid for a period of two years. A license may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current license. Licenses not properly renewed shall expire on the expiration date. *05/30/2007*

3.6.1.1 Reinstatement

- (a) A license may be reinstated within thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.
- (b) A license may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal, paying a non-refundable reinstatement fee and submitting proof of having completed 12 hours of continuing education in addition to the 18 hours of continuing education required to renew a license on active status.
- (c) A license may be reinstated after the six-month period described in Subsection (b) and until one year after expiration by complying with all requirements for a timely renewal, paying a non-refundable reinstatement fee, and submitting proof of having completed 24 hours of continuing education in addition to the 18 hours of continuing education required to renew a license on active status.
- (d) A license that has been expired for more than one year may not be reinstated and an applicant must apply for a new license following the same procedure as an original license. *06/16/2010*

3.6.2 Renewal Requirements.

3.6.2.1 Continuing Education. To renew a license on active status, an applicant must submit to the division proof of having completed, during the previous license period and by the 15th day of the month of expiration, 18 non-duplicative hours of continuing education from courses certified by the division.

- (a) During the first license period, a licensee must take the 12-hour "New Sales Agent Course" certified by the division. Licensees in their first license period will need to complete 6 additional non-duplicative hours of continuing education (either "core" or "elective") as defined in R162.9.2.1 – 9.2.10.
- (b) During subsequent license periods, a licensee must take at least 9 hours of non-duplicative continuing education from courses certified by the division as "core" as defined in R162.9.2.1. A licensee must take any remaining hours of continuing education from courses certified by the division as "elective" as defined in R162.9.2.2 - 9.2.2.10.
- (c) The division may grant continuing education credit for non-certified courses submitted by a renewal applicant in the form required by the division, if the course was not required by these rules to be certified and the division determines that the course meets the continuing education objectives listed in Rule R162.9.2.
- (d) Licensees must retain original course completion certificates for three years following renewal and produce those certificates when audited by the division. *06/16/2010*

3.6.2.2 Principal Broker. To renew a principal broker license on active status an applicant must certify that the business name under which the licensee is operating is current and in good standing with the Division of Corporations and that all real estate trust accounts are current and in compliance with Rule R162-4.2. *05/30/2007*

3.6.2.3 Any misrepresentation in an application for renewal is a separate violation of these rules and separate grounds for disciplinary action against the licensee. *06/16/2010*

R162-4. Office Procedures - Real Estate Principal Brokerage.

R162-4-1. Records and Copies of Documents.

4.1. The principal broker must maintain in his office and make available for inspection and copying by the Division all records pertaining to a real estate transaction for a period of at least three calendar years following the year in which an offer was rejected or the transaction either closed or failed. *06/16/2010*

4.1.1. Location of Records. Unless otherwise authorized by the Division in writing, the business records of the principal broker shall be maintained at his principal business location or, where applicable, at the branch office. If a brokerage closes its operation the principal broker must, within ten days after the closure, notify the Division in writing of where the

records will be maintained in order to comply with R162-4.1 above. If a brokerage files for bankruptcy, the principal broker must, upon filing, notify the Division in writing of the filing and the current location of brokerage records. *0/16/2010*

4.1.2. Transaction Identification. All transactions, whether pending, closed or failed, must be numbered consecutively and identifiable in a manner that, in the opinion of the representative of the Division, the transaction can be readily followed in all pertinent documents. A sequential transaction number is to be assigned to every offer, and a separate transaction file is to be maintained for every offer, including rejected offers involving funds deposited to the brokerage trust account. A sequential transaction number need not be assigned to rejected offers which do not involve funds deposited to trust. The principal broker may, at his option, maintain a separate transaction file for each rejected offer which does not involve funds deposited to trust or keep such rejected offers in a single file. *06/16/2010*

4.1.3. Statement of Account. At the expiration of 30 days after an offer has been made by a buyer and accepted by a seller, either party may demand, and the principal broker must furnish, a detailed statement showing the current status of the transaction. On demand by either party, the principal broker must furnish an updated statement at 30-day intervals thereafter until the transaction is closed. *06/16/2010*

4.1.4. Settlement Statements. A principal broker charged with closing a sale shall cause to be prepared and delivered to the buyer and seller, upon completion of a transaction, a detailed closing statement of all respective accounts showing receipts and disbursement. *06/16/2010*

4.1.4.1. Settlement statements for real estate transactions in which a real estate principal broker participates must show the following: the date of settlement; the total purchase price of the property; an itemization of adjustments, money, or things of value received or paid, and to whom each item is credited or debited. The dates of the adjustments must be shown if they are not the same as the date of settlement. Also shown must be the balances due from the respective parties to the transaction, and the names of the payees, makers, and assignees of all notes paid, made, or assumed. The statements furnished to each party to the transaction must contain an itemization of credits and debits that pertain to each party. *06/16/2010*

4.1.4.2. Regardless of who closes a transaction, a principal broker is responsible for the content and accuracy of settlement statements prepared for the signature of the principal broker's client. *06/16/2010*

4.1.4.3. A principal broker who closes a transaction must show proof of delivery of the settlement statement(s) to the buyer and seller. Signatures of the buyer and seller on the file copy of the settlement statement or a copy of a transmittal letter sent by certified mail, return receipt requested, when signatures are not attainable, will satisfy this requirement. *06/16/2010*

4.1.5. Death or Disability of Principal Broker: Upon the death or inability of a principal broker to act as a principal broker the following procedures shall apply: *01/01/1987*

4.1.5.1. In the case of a corporation, partnership, Limited Liability Company, association, or other legal entity the provisions of R162-2-2.3.2. shall apply. *04/23/1998*

4.1.5.2. In the case of a sole proprietor all brokerage activity must cease and a family attorney or representative shall: (1) notify the Division and all licensees affiliated with the principal broker in writing of the date of death or disability; (2) advise the Division as to the location where records will be stored; (3) notify each listing and management client in writing to the effect that the principal broker is no longer in business and that the client may enter a new listing or management agreement with the firm of the client's choice; (4) notify each party and cooperating broker to any existing contracts; and (5) retain trust account monies under the control of the administrator, executor or co-signer on the account until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition. *06/16/2010*

R162-4-2. Trust Accounts.

4.2 All monies received in a real estate transaction regulated under Section 61-2-1, et seq., must be deposited in a "Real Estate Trust Account," in a Utah bank, credit union, or other approved escrow depository in this state. Such "Real Estate Trust Account" shall be non-interest-bearing except as provided in Section 4.2.4 below. The principal broker will be held personally responsible for deposits at all times. The principal broker must notify the Division in writing of the location and account numbers of all real estate trust accounts which he maintains. All "Real Estate Trust Accounts" shall be used exclusively for real estate transactions regulated under Section 61-2-1, et seq. Funds received in connection with rental of tourist accommodations for any period of less than 30 consecutive days shall not be deposited in a "Real Estate Trust Account". *10/16/2002*

4.2.1. Deposits. All monies received by a licensee in a real estate transaction, whether it be cash or check, must be delivered to the principal broker and deposited within three banking days after receipt of the funds by the licensee. This rule does not apply when: *10/03/1997*

4.2.1.1. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be held for a specific length of time or are to be deposited upon acceptance by the seller; or *10/03/1997*

4.2.1.2. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be made out and paid to the seller, or to the person or company named as the escrow closing agent; or *10/03/1997*

4.2.1.3. A promissory note is given as the earnest money deposit or otherwise credited to the transaction. The promissory note must name the seller as payee and

be retained in the principal broker's file until closing. If a promissory note is used in a real estate transaction, the Real Estate Purchase Contract or other agreement must disclose that the consideration is in the form of a promissory note. *10/03/1997*

4.2.2. Commingling. Not more than \$500 of the principal broker's own funds can remain in the "Real Estate Trust Account" or the "Property Management Trust Account," or the Division will consider the account to be commingled. *08/21/2002*

4.2.3. Builder Deposits. If a principal broker, who is also a builder or developer, receives deposit money under a Real Estate Purchase Contract, construction contract, or other agreement which provides for the construction of a dwelling, the deposit money must be placed in the "Real Estate Trust Account" or if the broker and the parties to the transaction agree in writing, the "Interest Bearing Real Estate Trust Account" and not be used for construction purposes unless specifically provided in the document or by separate written consent of the purchaser. *04/23/1998*

4.2.4. Interest Bearing Trust Accounts. Real Estate Trust Accounts may be interest-bearing only as provided in Section 4.2.4.1 or 4.2.4.2 below: *10/16/2002*

4.2.4.1 If an earnest money deposit or other trust funds are received and the parties to the transaction believe that it would be uneconomical to place the money in a non-interest-bearing trust account, the principal broker shall place the money in a separate interest-bearing "Real Estate Trust Account" upon written request of the parties. The written request must designate to whom the interest will be paid upon completion or failure of the sale; or *10/16/2002*

4.2.4.2 Except as provided in Section 4.2.4.1, a principal broker may elect to maintain an interest-bearing "Real Estate Trust Account" only if the interest earned on the account is paid to a non-profit organization that has qualified, and remains qualified at the time of the payment, under Section 501(c)(3) of the Internal Revenue Code. Such non-profit organization must have as its exclusive purpose the providing of grants to affordable housing programs in the State of Utah. The affordable housing program that is the recipient of the grant must also be qualified, at the time of the grant, as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. If a principal broker makes this election, the Division must be notified in writing of the location and account number of the interest-bearing "Real Estate Trust Account" at the time the account is opened. *10/16/2002*

4.2.5. Liability for Receipt. All consideration represented as received by a licensee on a Real Estate Purchase Contract or other document must have, in fact, been received by the licensee. A licensee must not rely on a buyer's or a lessee's promise to deliver the consideration at a future date. *10/03/1997*

4.2.6 Property Management Trust Account. Each principal broker engaged in property management shall establish a separate "Property Management Trust Account." A principal broker who collects rents for others only occasionally or who does so as a

convenience for his clients, and manages no more than six accounts, may use the "Real Estate Trust Account" for this purpose and need not maintain a "Property Management Trust Account". *04/23/1998*

4.2.7. Disbursements. All cash and like payments in lieu of cash received by a principal broker in a real estate transaction are to be disbursed only in accordance with specific language in the Real Estate Purchase Contract authorizing such disbursement, other proper written authorization of the parties having an interest in the payments, or by court order. *08/21/2002*

4.2.7.1. The withdrawal of any portion of the principal broker's sales commission must not take place without written authorization from the seller and buyer or until the closing statements have been delivered to the buyer and seller and the buyer or seller has been paid for the amount due as determined by the closing statement. *10/03/1997*

4.2.7.2. Commissions due the principal broker, other licensees associated with the principal broker, or other principal brokers may be paid directly from the trust account only after the transaction is closed or otherwise terminated. If commissions are so disbursed, a record of each disbursement is to be recorded on the trust account ledger sheet for the transaction. *03/03/1994*

4.2.7.3. When it becomes apparent to the principal broker that a transaction has failed, or if a party to the failed transaction requests disbursement of the earnest money or other trust funds, the principal broker is required to determine whether any of the conditions in the Real Estate Purchase Contract authorizing disbursement have occurred or whether there is other written authorization of the parties to disburse the trust funds. *08/21/2002*

4.2.7.4. Disputes over funds. For the purposes of this section and section 4.2.7.5, a "dispute over funds" is defined as any situation in which both parties to a contract have submitted a written claim of entitlement to earnest money or other trust funds to the broker holding the funds. *08/21/2002*

4.2.7.4.1 If there is written authorization to disburse in the Real Estate Purchase Contract signed by both parties or in another writing signed by the party who will not be receiving the funds, the principal broker may disburse the funds without further delay, whether or not there is a dispute between the parties over the funds. *08/21/2002*

4.2.7.4.2 The principal broker may, at the broker's option, interplead the funds into court in any transaction where the broker is unable to determine whether there is written authorization to disburse under the circumstances of the transaction. If the principal broker interpleads the funds, the funds shall only be disbursed by the principal broker: a) upon written authorization of the parties who will not receive the funds; b) pursuant to

the order of a court of competent jurisdiction; or c) as provided in Section 4.2.7.6. *08/21/2002*

4.2.7.5 Mediation. In the event a dispute arises over the return or forfeiture of the earnest money or other trust funds and the principal broker has not already disbursed the funds in accordance with section 4.2.7.4.1, or interpleaded the funds in accordance with section 4.2.7.4.2, and if no party has filed a civil suit arising out of the transaction, the principal broker shall, within 15 days of receiving written notice of the fact that both parties claim the disputed funds, provide the parties written notice of the dispute and request them to meet to mediate the matter. If the parties have contractually agreed to submit disputes arising out of their contract to mediation, the principal broker shall notify the parties of their obligation to submit the dispute over funds to an independent mediator agreed upon by the parties. If the parties have not contractually agreed to independent mediation, the principal broker holding the earnest money or trust funds shall use good faith best efforts to mediate. *08/21/2002*

4.2.7.5.1. Unsuccessful mediation. In the event the dispute over funds is not resolved in either a broker or independent mediation attempt, the principal broker shall maintain the disputed funds in a non-interest bearing real estate trust account. If the parties authorize, or if they previously authorized, deposit into a separate interest bearing trust account as provided in R162-4.2.4, the disputed funds may be maintained in a separate interest bearing trust account for disputed funds. The funds shall only be disbursed by the principal broker: (1) upon written authorization of the parties who will not receive the funds; (2) pursuant to the order of a court of competent jurisdiction; or (3) as provided in Section 4.2.7.4.2. *08/21/2002*

4.2.7.6. If the principal broker has not received written notice of a claim to the funds, including interest if any, within five years after the failure of the transaction, the principal broker may remit the funds to the State Treasurer's Office as "abandoned" property according to the provisions of Utah Code Section 67-4a-101, et seq. *10/03/1997*

4.2.8. Records. A principal broker must maintain at his principal business location a complete record of all consideration received or escrowed for real estate transactions in the following manner: *07/01/1985*

4.2.8.1. A duplicate deposit slip must show the amount of money received, the transaction number, and the date and place of deposit. *07/01/1985*

4.2.8.2. A set of checks and deposit slips must be used denoting the principal broker's business name and address, stating "Real Estate Trust Account" or "Property Management Trust Account," with the checks numbered consecutively. Checks drawn on this account are to be identified to the specific transaction. Deposits to this account are to be identified to the specific transaction. Voided

trust checks are to be marked "Void" and the original check retained in the principal broker's file. A principal broker may establish as many bank trust accounts as desired. However, each trust account must be identified with the type of activity for which the account is to be used and the Division must be notified in writing when each account is established. *04/23/1998*

4.2.8.3. A check register or check stubs must be maintained which itemize deposits and disbursements in consecutive order showing the date, payee or payor, the transaction information, check number, amount of disbursement or deposit, and the current balance remaining in the account. *07/01/1985*

4.2.8.4. An individual trust ledger sheet must be established upon deposit of any consideration and assigned a sequential transaction number for each transaction-- be it rental, sale, or other. The ledger sheet must show the names of the parties, location of the property, the date and amount of each deposit or disbursement, the name of the payee and payor, the current balance remaining, and any other relevant transaction information. Each ledger sheet, after the transaction is closed, must show the final disposition of the consideration and be retained in the principal broker's file for a minimum of three years following the year in which the transaction was closed. *03/03/1994*

4.2.8.5. The trust account is to be reconciled with the bank statement at least monthly. The trust liability, which is the total of ledger cards, and similar books, records, and accounts must be kept up to date. *03/03/1994*

R162-4-3. Branch Office.

4.3 A branch office must be registered with the Division prior to operation. *01/01/1988*

4.3.1. Exemptions. A branch office does not include a model home, a project sales office, or a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth. *04/23/1998*

4.3.2. Operation. A branch office must operate under the same business name as the principal brokerage. *01/01/1988*

4.3.3. Trust Account. The principal broker or branch broker must notify the Division in writing of the location and account number of all real estate trust accounts in which the funds received at each branch office will be deposited. *04/23/1998*

4.3.4. Branch Broker. Each branch office must have a branch broker who will actively manage the office. The branch broker must be an associate broker. The principal broker must actively supervise the branch broker. *04/23/1998*

4.3.5. Registration. To register a branch office, the principal broker must submit to the Division, on the forms required by the Division, the location of the branch, the name of

the branch broker and the names of all associate brokers and sales agents assigned to the branch, accompanied by the applicable fee. *04/23/1998*

4.3.6. Change of Branch Broker. The principal broker must notify the Division in writing on the forms required by the Division at the time of a change of branch broker. *04/23/1998*

R162-4-4. Written Instructions for Commission Distribution by Title Insurance Agent.

(1) If a principal broker elects to assign a portion or all of the principal broker's compensation to an associate broker or sales agent in accordance with Utah Code Annotated Section 61-2-10, the principal broker shall provide written instructions to the title insurance agent that include the following: *08/21/2009*

- (a) an identification of the property involved in the real estate transaction;
- (b) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;
- (c) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker; and
- (d) a prohibition against alteration of the written instructions by anyone other than the principal broker.

(2) Items beyond those listed in Subsection (1) may be included in the written instructions at the discretion of the principal broker. *08/21/2009*

R162-5. Property Management.

R162-5-1. Definition.

5.1. For purposes of this rule, property management requiring a real estate license includes advertising real estate for lease or rent, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, collecting rent and accounting for and disbursing the money collected, arranging for repairs to be made to the real estate, and all other acts listed in Section 61-2-2(13)(a). It does not include the leasing or management of surface or subsurface minerals, or oil and gas interests, which is separate from a sale or lease of the surface estate. *03/03/1994*

R162-5-2. Exemptions.

5.2. The following individuals are not required to hold active real estate licenses to engage in property management: *06/24/1992*

5.2.1. Owners. An owner of real estate who manages his own property; *06/24/1992*

5.2.2. Employees. A regular salaried employee of an owner of real estate who manages property owned by his employer; *06/24/1992*

5.2.3. Apartment Managers. An individual who manages the apartments at which he resides in exchange for free or reduced rent on his apartment. *06/24/1992*

5.2.4. Homeowner's Association Employees. A full time salaried employee of a homeowner's association who manages units subject to the declaration of condominium which established the homeowner's association. *06/24/1992*

R162-5-3. Property Management by Real Estate Brokerage.

5.3. All property management performed by a real estate brokerage which has not obtained a separate property management company registration, or any licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage and not under a separate business name. *04/23/1998*

5.3.1. All property management activities by a sales agent or associate broker affiliated with a principal broker shall be actively supervised by that principal broker. In the case of a branch office, the branch broker shall also actively supervise the licensees and unlicensed assistants affiliated with that branch. *04/23/1998*

R162-5-4. Property Management by Separate Property Management Company.

5.4. A separate property management company registration must be obtained in order to conduct property management business under a name different than that of the real estate brokerage. *04/23/1998*

5.4.1. The business of a separate property management company shall be exclusively property management. No real estate sales activity may be conducted by a property management company. *04/23/1998*

5.4.2. A license to operate a property management company will be granted upon compliance with the following conditions: *04/23/1998*

5.4.2.1. Application. Submission of the property management company application form required by the division, signed by an actively licensed principal broker, together with the proper application fees. *04/23/1998*

5.4.2.2. Business Name Approval. Compliance with the name approval provisions in R162-2.3. in the case of a principal broker who registers the name of his property management company with the division or R162-2.4. in the case of a property management company registration issued to a corporation, partnership, Limited Liability Company or association. *04/23/1998*

5.4.2.3. Property management by unlicensed principals or owners prohibited. Individuals who are principals or owners of a corporation, partnership, Limited Liability Company or association which is issued a property management company registration shall not engage in activity which requires a license unless

they are licensed with the division and properly affiliated with the management broker for the corporation, partnership, Limited Liability Company or association.
04/23/1998

5.4.3. The principal broker shall sign and submit the forms required by the division to affiliate with the property management company of each associate broker, branch broker and sales agent who will conduct property management services for the property management company. *04/23/1998*

5.4.4. Support Services Personnel. Individuals who are employees of a property management company may perform the following services under the supervision of the principal broker without holding active real estate licenses: providing a prospective tenant with access to a vacant apartment; providing secretarial, bookkeeping, maintenance, or rent collection services; quoting predetermined rent and lease terms; and filling out pre-printed lease or rental agreements. *04/23/1998*

5.4.5. Supervision. All property management activities by an associate broker or sales agent affiliated with the management company and all activities on behalf of the company by support services personnel shall be actively supervised by the principal broker of the company. In the case of a branch office, the branch broker shall also actively supervise the licensees and support services personnel affiliated with that branch.
04/23/1998

R162-6. Licensee Conduct.

R162-6-1. Improper Practices.

6.1.1. False Devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used. *03/03/1994*

6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.
03/16/1992

6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor. *11/15/1993*

6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner. *10/18/1991*

6.1.3. Licensee's Interest in a Transaction. A licensee shall not either directly or indirectly buy, sell, lease or rent any real property as a principal, without first disclosing in writing

on the purchase agreement or the lease or rental agreement the licensee's true position as principal in the transaction. For the purposes of this rule, a licensee will be considered to be a "principal in the transaction" if the licensee: a) is the buyer or the lessee in the transaction; b) has any ownership interest in the property; c) has any ownership interest in the entity that is the buyer, seller, lessor or lessee; or d) is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor or lessee. *03/02/2009*

6.1.3.1. Disclosure of Licensed Status. Regardless of whether a person's license is in active or inactive status, a licensee shall not fail to disclose in writing on any agreement to buy, sell, lease or rent any real property as a principal that the licensee holds a Utah real estate license. *10/19/2006*

6.1.4. Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing. *10/18/1991*

6.1.4.1. Net listings are prohibited and shall not be taken by a licensee. *10/18/1991*

6.1.5. Advertising. This rule applies to all advertising materials, including newspaper, magazine, Internet, e-mail, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs. *06/03/1999*

6.1.5.1. Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein. *03/16/1992*

6.1.5.2 If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker". *11/05/1995*

6.1.5.3. Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees. *01/25/1996*

6.1.5.4. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name. *01/25/1996*

6.1.5.5. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions: *11/15/1995*

- (a) The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in

- lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and *01/25/1996*
- (b) The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising. *11/15/1995*

6.1.5.6 If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees. *04/23/1998*

6.1.5.7. Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited. *11/15/1995*

6.1.5.8. Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor. *04/23/1998*

6.1.5.9 If an active licensee advertises to purchase or rent property, all advertising must contain the name of the licensee's real estate brokerage as shown on Division records. *06/03/1999*

6.1.6. Double Commissions. In order to avoid subjecting the seller to paying double commissions, licensees may not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent. *03/02/2009*

6.1.6.1. A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know of an existing agency representation agreement with another licensee. *04/23/1998*

6.1.7. Retention of Buyer's Deposit. A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller. *10/18/1991*

6.1.8. Unprofessional Conduct. No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on the licensee's own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter. *03/02/2009*

6.1.9. Finder's Fees. A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule. *10/18/1991*

6.1.9.1. Token Gifts. A licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction. *11/23/2009*

6.1.10. Referrals and Provision of Settlement Services. *05/30/2007*

6.1.10.1 Referrals of Prospects to Lender or Mortgage Broker. A licensee may not receive a referral fee from a lender or a mortgage broker. *05/30/2007*

6.1.10.2 Providing Settlement Services. A licensee may not act as a real estate agent or broker in the same transaction in which the licensee also acts as a mortgage loan officer or loan originator, appraiser, escrow agent, or provider of title services. *05/30/2007*

6.1.11. Failure to Have Written Agency Agreement. A principal broker and a licensee acting on the principal broker's behalf shall have written agency agreements with their principals. *03/02/2009*

6.1.11.1. A principal broker and a licensee acting on the principal broker's behalf who represent a seller shall have a written agency agreement with the seller defining the scope of the agency. *03/02/2009*

6.1.11.2. A principal broker and a licensee acting on the principal broker's behalf who represent a buyer shall have a written agency agreement with the buyer defining the scope of the agency. *03/02/2009*

6.1.11.3. A principal broker and a licensee acting on the principal broker's behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.15.3.1. *03/02/2009*

6.1.11.3.1 A licensee may not act or attempt to act as a limited agent in any transaction in which: a) the licensee is a principal in the transaction; or b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction. *08/21/2008*

6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:

- (a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;

- (b) notify the listing brokerage that sub-agency is requested;
- (c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and
- (d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained. *11/15/1993*

6.1.11.5. A principal broker and a licensee acting on the principal broker's behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency. *03/02/2009*

6.1.11.6. A principal broker and a licensee acting on the principal broker's behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency. *03/02/2009*

6.1.12. Signing without legal authority. A licensee shall not sign or initial any document for a principal unless the licensee has prior written authorization in the form of a duly executed power of attorney from the principal authorizing the licensee to sign or initial documents for the principal. A copy of the power of attorney shall be attached to all documents signed or initialed for the principal by the licensee. *07/20/2005*

6.1.12.1. When signing a document for a principal, the licensee shall sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact." *07/20/2005*

6.1.12.2. When initialing a document for a principal, the licensee shall initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name)." *07/20/2005*

6.1.13. Counteroffers. A licensee shall not make a counteroffer by making changes, whiting out, or otherwise altering the provisions of the Real Estate Purchase Contract or the language that has been filled in on the blanks of the Real Estate Purchase Contract. All counteroffers to a Real Estate Purchase Contract shall be made using the State-Approved Addendum form. *07/20/2005*

R162-6-2. Standards of Practice.

6.2.1. Approved Forms. The following standard forms are approved by the Utah Real Estate Commission and the Office of the Attorney General for use by all licensees: *01/27/2000*

- (a) August 27, 2008, Real Estate Purchase Contract (use of this form shall be mandatory beginning January 1, 2009); *03/02/2009*
- (b) January 1, 1999 Real Estate Purchase Contract for Residential Construction; *01/27/2000*
- (c) January 1, 1987, Uniform Real Estate Contract; *01/27/2000*
- (d) October 1, 1983, All Inclusive Trust Deed; *01/27/2000*
- (e) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed; *01/27/2000*

- (f) August 5, 2003, Addendum to Real Estate Purchase Contract; *01/27/2000*
- (g) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract; *03/02/2009*
- (h) January 1, 1999, Buyer Financial Information Sheet; *04/21/2004*
- (i) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract; *03/02/2009*
- (j) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract; *04/21/2004*
- (k) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; *04/21/2004*
- (l) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards. *04/21/2004*

6.2.1.1. Forms Required for Closing. Principal brokers and associate brokers may fill out forms in addition to the standard state-approved forms if the additional forms are necessary to close a transaction. Examples include closing statements, and warranty or quit claim deeds. *03/03/1994*

6.2.1.2. Forms Prepared by an Attorney. Any licensee may fill out forms prepared by the attorney for the buyer or lessee or the attorney for the seller or lessor to be used in place of any form listed in R162-6.2.1 (a) through (g) if the buyer or lessee or the seller or lessor requests that other forms be used and the licensee verifies that the forms have in fact been drafted by the attorney for the buyer or lessee, or the attorney for the seller or lessor. *04/23/1998*

6.2.1.3. Additional Forms. If it is necessary for a licensee to use a form for which there is no state-approved form, for example a lease, the licensee may fill in the blanks on any form which has been prepared by an attorney, regardless of whether the attorney was employed for the purpose by the buyer, seller, lessor, lessee, brokerage, or an entity whose business enterprise is selling blank legal forms. *08/21/2002*

6.2.1.4. Standard Supplementary Clauses. There are Standard Supplementary Clauses approved by the Utah Real Estate Commission which may be added to Real Estate Purchase Contracts by all licensees. The use of the Standard Supplementary Clauses will not be considered the unauthorized practice of law. *11/15/1993*

6.2.2. Copies of Agreement. After a purchase agreement is properly signed by both the buyer and seller, it is the responsibility of each participating licensee to cause copies thereof, bearing all signatures, to be delivered or mailed to the buyer and seller with whom the licensee is dealing. The licensee preparing the document shall not have the parties sign for a final copy of the document prior to all parties signing the contract evidencing agreement to the terms thereof. After a lease is properly signed by both landlord and tenant, it is the responsibility of the principal broker to cause copies of the lease to be delivered or mailed to the landlord or tenant with whom the brokerage or property management company is dealing. *11/15/1993*

6.2.3. Residential Construction Agreement. The Real Estate Purchase Contract for Residential Construction must be used for all transactions for the construction of dwellings to be built or presently under construction for which a Certificate of Occupancy has not been issued. *08/21/2002*

6.2.4. Real Estate Auctions. A principal broker who contracts or in any manner affiliates with an auctioneer or auction company which is not licensed under the provisions of Section 61-2-1 et seq. for the purpose of enabling that auctioneer or auction company to auction real property in this state, shall be responsible to assure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions. Auctioneers and auction companies who are not licensed under the provisions of Section 61-2-1 et seq. may conduct auctions of real property located within this state upon the following conditions: *03/03/1994*

6.2.4.1. Advertising. All advertising and promotional materials associated with an auction must conspicuously disclose that the auction is conducted under the supervision of a named principal broker licensed in this state; *10/18/1991*

6.2.4.2. Supervision. The auction must be conducted under the supervision of a principal broker licensed in this state who must be present at the auction; *10/18/1991*

6.2.4.3. Use of Approved Forms. Any purchase agreements used at the auction must meet the requirements of Section 61-2-20 and must be filled out by a Utah real estate licensee; *03/03/1994*

6.2.4.4. Placement of Deposits. All monies deposited at the auction must be placed either in the real estate trust account of the principal broker who is supervising the auction or in an escrow depository agreed to in writing by the parties to the transaction; and *10/18/1991*

6.2.4.5. Closing Arrangements. The principal broker supervising the auction shall be responsible to assure that adequate arrangements are made for the closing of each real estate transaction arising out of the auction. *10/18/1991*

6.2.5. Guaranteed Sales. As used herein, the term "guaranteed sales plan" includes: (a) any plan in which a seller's real estate is guaranteed to be sold or; (b) any plan whereby a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time. *03/03/1994*

6.2.5.1. In any real estate transaction involving a guaranteed sales plan, the licensee shall provide full disclosure as provided herein regarding the guarantee: *10/18/1991*

- (a) Written Advertising. Any written advertisement by a licensee of a "guaranteed sales plan" shall include a statement advising the seller

that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed sales agreement. This information shall be set forth in print at least one-fourth as large as the largest print in the advertisement.

03/03/1994

- (b) Radio/Television Advertising. Any radio or television advertisement by a licensee of a "guaranteed sales plan" shall include a conspicuous statement advising if any conditions and limitations apply. *10/18/1991*
- (c) Guaranteed Sales Agreements. Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive. *10/18/1991*

6.2.6. Agency Disclosure. In every real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose in writing to the licensee's respective client(s) or any unrepresented parties, the licensee's agency relationship(s). The disclosure shall be made prior to the parties entering into a binding agreement with each other. The disclosure shall become part of the permanent file. *03/20/2009*

6.2.6.1. When a binding agreement is signed in a sales transaction, the prior agency disclosure shall be confirmed in the currently approved Real Estate Purchase Contract or, with substantially similar language, in a separate provision incorporated in or attached to that binding agreement. *04/23/1998*

6.2.6.1.1. The blank in paragraph 5 of the approved Real Estate Purchase Contract for "Seller's Brokerage" shall be filled in with either the principal broker's individual name or the principal broker's brokerage name. Notwithstanding the fact that either the principal broker's name or the brokerage name may be shown in paragraph 5, filling in the name of the brokerage does not change the agency relationship with the seller.

03/02/2009

6.2.6.2. When a lease or rental agreement is signed, a separate provision shall be incorporated in or attached to it confirming the prior agency disclosure. The agency disclosure shall be in the form stated in R162- 6.2.6.1, but shall substitute terms applicable for a rental transaction for the terms "buyer" and "seller".

03/02/2009

6.2.6.3. Disclosure to other agents. An agent who has established an agency relationship with a principal shall disclose who the agent represents to another agent in a transaction upon initial contact with the other agent. *03/02/2009*

6.2.7. Duty to Inform. Sales agents and associate brokers must keep their principal broker or branch broker informed on a timely basis of all real estate transactions in which the

licensee is involved, as agent or principal, in which the licensee has received funds on behalf of the principal broker or in which an offer has been written. *04/23/1998*

6.2.8. Broker Supervision. Principal brokers and associate brokers who are branch brokers shall be responsible for exercising active supervision over the conduct of all licensees affiliated with them. *04/23/1998*

6.2.8.1. A broker will not be held responsible for inadequate supervision if:
03/03/1994

- (a) An affiliated licensee violates a provision of Section 61-2-1, et seq., or the rules promulgated thereunder, in contravention of the supervising broker's specific written policies or instructions; *03/03/1994*
- (b) Reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures; *10/18/1991*
- (c) Upon learning of the violation, the broker attempted to prevent or mitigate the damage; *10/18/1991*
- (d) The broker did not participate in the violation;
- (e) The broker did not ratify the violation; and *10/18/1991*
- (f) The broker did not attempt to avoid learning of the violation. *10/18/1991*

6.2.8.2. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and affiliated licensees shall not release the broker and licensees of any duties, obligations, or responsibilities. *10/18/1991*

6.2.9. Disclosure of Fees. If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction. *10/18/1991*

6.2.10. Fees from Builders. All fees paid to a licensee for referral of prospects to builders must be paid to the licensee by the principal broker with whom the licensee is licensed and affiliated. All fees must be disclosed as required by R162-6.2.10. *03/02/2009*

6.2.11. Fees from Manufactured Housing Dealers. If a licensee refers a prospect to a manufactured home dealer or a mobile home dealer, under terms as defined in Section 58-56-1, et seq., any fee paid for the referral of a prospect must be paid to the licensee by the principal broker with whom the licensee is licensed. *03/02/2009*

6.2.12. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission. *03/02/2009*

6.2.12.1. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the

principal broker who is offering the inducement must notify the principal broker of the party who will pay the commission that the inducement will be offered.

03/02/2009

6.2.12.1.2. When the party who will pay the commission is not represented by a principal broker, the principal broker who is offering the inducement shall notify the party directly. *06/01/2009*

6.2.12.2. This rule does not:

- (a) require notice under R162-6.2.12.1 to be given by one principal broker according to a specific method or form preferred by another principal broker; or *03/02/2009*
- (b) authorize a principal broker to give any type of inducement that would violate the underwriting guidelines that apply to the loan for which a borrower has applied. *03/02/2009*

6.2.13. "Due-On-Sale" Clauses. Real estate licensees have an affirmative duty to disclose in writing to buyers and sellers the existence or possible existence of a "due-on-sale" clause in an underlying encumbrance on real property, and the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of the underlying encumbrance. *10/18/1991*

6.2.14. Personal Assistants. With the permission of the principal broker with whom the licensee is affiliated, the licensee may employ an unlicensed individual to provide services in connection with real estate transactions which do not require a real estate license, including the following examples: *04/23/1998*

- (a) Clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact has been initiated by the prospect and not by the unlicensed person; *06/24/1992*
- (b) At an open house, distributing preprinted literature written by a licensee, so long as a licensee is present and the unlicensed person furnishes no additional information concerning the property or financing and does not become involved in negotiating, offering, selling or filling in contracts; *04/23/1998*
- (c) Acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion of, or filling in of, the documents; *03/03/1994*
- (d) Placing brokerage signs on listed properties; *06/24/1992*
- (e) Having keys made for listed properties; and *06/24/1992*
- (f) Securing public records from the County Recorders' Offices, zoning offices, sewer districts, water districts, or similar entities. *03/03/1994*

6.2.14.1. If personal assistants are compensated for their work, they shall be compensated at a predetermined rate which is not contingent upon the occurrence of real estate transactions. Licensees may not share commissions with unlicensed persons who have assisted in transactions by performing the services listed in this rule. *09/14/1992*

6.2.14.2. The licensee who hires the unlicensed person will be responsible for supervising the unlicensed person's activities, and shall ensure that the unlicensed person does not perform activity which requires a real estate license. *09/14/1992*

6.2.14.3. Unlicensed individuals may not engage in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in R162-6.2.14.(a) above. *09/14/1992*

6.2.15. Fiduciary Duties. A principal broker and licensees acting on his behalf owe the following fiduciary duties to the principal: *11/15/1993*

6.2.15.1. Duties of a seller's or lessor's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the seller or the lessor owe the seller or the lessor the following fiduciary duties: *04/23/1998*

- (a) Loyalty, which obligates the agent to act in the best interest of the seller or the lessor instead of all other interests, including the agent's own; *04/23/1998*
- (b) Obedience, which obligates the agent to obey all lawful instructions from the seller or lessor; *04/23/1998*
- (c) Full disclosure, which obligates the agent to tell the seller or lessor all material information which the agent learns about the buyer or lessee or about the transaction; *04/23/1998*
- (d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller's or lessor's bargaining position if it were known, unless the agent has permission from the seller or lessor to disclose the information. This duty does not require the agent to withhold any known material fact concerning a defect in the property or the seller's or lessor's ability to perform his obligations; *04/23/1998*
- (e) Reasonable care and diligence; *11/15/1993*
- (f) Holding safe and accounting for all money or property entrusted to the agent; and *11/15/1993*
- (g) Any additional duties created by the agency agreement. *11/15/1993*

6.2.15.2. Duties of a buyer's or lessee's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the buyer or lessee owe the buyer or lessee the following fiduciary duties: *04/23/1998*

- (a) Loyalty, which obligates the agent to act in the best interest of the buyer or lessee instead of all other interests, including the agent's own; *04/23/1998*
- (b) Obedience, which obligates the agent to obey all lawful instructions from the buyer or lessee; *04/23/1998*
- (c) Full Disclosure, which obligates the agent to tell the buyer or lessee all material information which the agent learns about the property or the seller's or lessor's ability to perform his obligations; *04/23/1998*
- (d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the buyer or lessee which would

likely weaken the buyer's or lessee's bargaining position if it were known, unless the agent has permission from the buyer or lessee to disclose the information. This duty does not permit the agent to misrepresent, either affirmatively or by omission, the buyer's or lessee's financial condition or ability to perform; *04/23/1998*

- (e) Reasonable care and diligence; *11/15/1993*
- (f) Holding safe and accounting for all money or property entrusted to the agent; and *11/15/1993*
- (g) Any additional duties created by the agency agreement. *11/15/1993*

6.2.15.3. Duties of a limited agent. A principal broker and a licensee acting on the principal broker's behalf who act as agent for both seller and buyer, or lessor and lessee, commonly referred to as "dual agents," are limited agents since the fiduciary duties owed to seller and to buyer, or to lessor and lessee, are inherently contradictory. A principal broker and a licensee acting on the principal broker's behalf may act in this limited agency capacity only if the informed consent of both buyer and seller, or lessor and lessee, is obtained. *04/23/1998*

6.2.15.3.1. In order to obtain informed consent, the principal broker or a licensee acting on the principal broker's behalf shall clearly explain to both buyer and seller, or lessor and lessee, that they are each entitled to be represented by their own agent if they so choose, and shall obtain written agreement from both parties that they will each be giving up performance by the agent of the following fiduciary duties: *03/02/2009*

- (a) The principal broker or a licensee acting on the principal broker's behalf shall explain to buyer and seller, or lessor and lessee, that they are giving up their right to demand undivided loyalty from the agent, although the agent, acting in this neutral capacity, shall advance the interest of each party so long as it does not conflict with the interest of the other party. In the event of conflicting interests, the agent will be held to the standard of neutrality; *03/02/2009*
- (b) The principal broker or a licensee acting on the principal broker's behalf shall explain to buyer and seller, or lessor and lessee, that there will be a conflict as to a limited agent's duties of confidentiality and full disclosure, and shall explain what kinds of information will be held confidential if told to a limited agent by either buyer or seller, or lessor and lessee, and what kinds of information will be disclosed if told to the limited agent by either party. The limited agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information; and *03/02/2009*
- (c) The principal broker or a licensee acting on the principal broker's behalf shall explain to the buyer and seller, or lessor

and lessee, that the limited agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations. *03/02/2009*

- (d) The Division and the Commission shall consider use of consent language approved by the Division and the Commission to be informed consent. *11/15/1993*

6.2.15.3.2. In addition, a limited agent owes the following fiduciary duties to all parties: *04/23/1993*

- (a) Obedience, which obligates the limited agent to obey all lawful instructions from either the buyer or the seller, lessor and lessee, consistent with the agent's duty of neutrality; *04/23/1993*
- (b) Reasonable care and diligence; *11/15/1993*
- (c) Holding safe all money or property entrusted to the limited agent; and *11/15/1993*
- (d) Any additional duties created by the agency agreement. *11/15/1993*

6.2.15.4. Duties of a sub-agent. A principal broker and a licensee acting on the principal broker's behalf who act as sub-agents owe the same fiduciary duty to a principal as the brokerage retained by the principal. *03/02/2009*

R162-7. Enforcement.

R162-7-1. Filing of Complaint.

7.1. An aggrieved person may file a complaint in writing against a licensee; or the Division or the Commission may initiate a complaint upon its own motion for alleged violation of the provisions of these rules or of Section 61-2-1, et seq. The Division will not entertain complaints between licensees regarding claims to commissions. *03/03/1994*

R162-7-2. Notice or Complaint.

7.2. When the Division notifies a licensee of a complaint against the licensee, or when the Division notifies a licensee that it needs information from the licensee, the licensee must respond to the notice in the manner specified in the notice within ten business days after receipt of the notice from the Division. Failure to respond to a notice or complaint or to any subsequent requests for information from the Division within the required time period will be considered an additional violation of these rules and separate grounds for disciplinary action against the licensee. *05/03/2007*

R162-7-3. Investigation and Enforcement.

7.3. The investigative and enforcement activities of the Division shall include the following: investigation of information provided on new license applications and applications for license renewal; evaluation and investigation of complaints; auditing licensees' business records, including trust account records; meeting with complainants, respondents, witnesses and attorneys; making recommendations for dismissal or prosecution; preparation of cases for formal or informal hearings, restraining orders or injunctions; working with the assistant attorney general and representatives of other state and federal agencies; and entering into proposed stipulations for presentation to the Commission and the director. *02/18/2004*

R162-7-4. Corrective Notice.

7.4. In addition to disciplinary action under Section 61-2-11, the Division may give a licensee written notice of specific violations of these rules and may grant a licensee a reasonable period of time, not exceeding 30 days, to correct a defect in that licensee's practices or operations. The licensee's failure to correct the defect within the time granted shall constitute separate grounds for disciplinary action against the licensee. The Division is not required to give a corrective notice and allow an opportunity to correct a defect before it may commence disciplinary action against a licensee. *04/23/1998*

R162-8. Prelicensing Education.

R162-8-1. School Application for Certification.

8.1 Prelicense education credit shall be given to students only for courses provided by schools that are certified by the Division at the time the courses are taught. Applicants shall apply for school certification by submitting all forms and fees required by the Division not less than 90 days prior to a course being taught. Applications shall include at minimum the following information which will be used in determining approval:
05/30/2007

8.1.1 Name, phone number and address of the school, the school director, and all owners of the school; *05/30/2007*

8.1.1.1 The school director shall obtain approval of the school name from the Division prior to registering that name with the Division of Corporations and Commercial Code in the Department of Commerce as a real estate education provider. *05/30/2007*

8.1.2 A description of the type of school and a description of the school's physical facilities; *05/30/2007*

8.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in any private residence. *05/30/2007*

8.1.3 A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of class time; *05/30/2007*

8.1.3.1 All courses of study shall meet the minimum standards set forth in the State of Utah Standard Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics. *05/30/2007*

8.1.3.2 The school director shall certify that all courses of study will meet the minimum hourly requirement of that course. *05/30/2007*

8.1.3.3 The school director shall certify that the school will not give a student credit for more than eight credit hours per day. *05/30/2007*

8.1.4 The name and certification number of each certified instructor and/or the name and resume documenting the knowledge and expertise of each guest lecturer who will teach the course; *05/30/2007*

8.1.4.1 A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division academic training or experience qualifying him to teach the course. *05/30/2007*

8.1.5 An identification of whether the method of instruction will be traditional education or distance education; *05/30/2007*

8.1.6. A school seeking certification of distance education preclicensing courses shall: *05/30/2007*

8.1.6.1 submit to the Division a complete description of all course delivery methods and all media to be used; *05/30/2007*

8.1.6.2 provide course access to the Division using the same delivery methods and media that will be provided to the students; *05/30/2007*

8.1.6.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives; *05/30/2007*

8.1.6.4 describe how the students' achievement of the stated learning objectives will be measured at regular intervals; *05/30/2007*

8.1.6.5 describe how and when preclicensing instructors will be available to answer student questions; *05/30/2007*

8.1.6.6 provide an attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims. *05/30/2007*

8.1.7 A copy of at least two final examinations of the course and the answer keys which are used to determine if the student has passed the exam, accompanied by an explanation of procedure if the student fails the final examination and thereby fails the course. *05/30/2007*

8.1.7.1 A maximum of 10% of the required class time may be spent in testing, including practice tests and the final examination. A student cannot challenge a course or any part of a course of study in lieu of attendance or active participation. *05/30/2007*

8.1.8 A list of the titles, authors and publishers of all required textbooks; *05/30/2007*

8.1.8.1 All texts, workbooks, supplements, and any other materials must be appropriate and current in their application to the required course outline. *05/30/2007*

8.1.9 Days, times and locations of classes; *05/30/2007*

8.1.9.1 A college or a university may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or other. A college quarter hour credit is the equivalent of 10 classroom hours, and a college semester hour credit is the equivalent of 15 classroom hours. *05/30/2007*

8.1.10 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy; *05/30/2007*

8.1.11 A copy of the statement which shall be provided to each student in capital letters no smaller than 1/4 inch containing the following language: "A student attending the (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for agents at this school;" and *05/30/2007*

8.1.12 Any other information as the Division may require. *05/30/2007*

R162-8-2. Determining Fitness for School Certification.

8.2 The Division, with the concurrence of the Commission, shall certify schools based on the honesty, integrity, truthfulness, reputation and competency of the school director and school owners. *05/30/2007*

R162-8-3. School Certification and Renewal.

8.3 The term of a school certification is twenty-four months. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration

date of the current certification. School certifications not properly renewed shall expire on the expiration date. *05/30/2007*

8.3.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee. *05/30/2007*

8.3.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee. *05/30/2007*

8.3.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification. *05/30/2007*

R162-8-4. School Conduct and Standards of Practice.

8.4.1 In order to maintain good standing and renew a certification, a course sponsor shall: *05/30/2007*

8.4.1.1 teach the approved course of study as outlined in the State Approved Course Outline; *05/30/2007*

8.4.1.2 require each student to attend the required number of hours and pass a final examination; *05/30/2007*

8.4.1.3 maintain a record of each student's attendance for a minimum of three years after enrollment; *05/30/2007*

8.4.1.4 not accept a student for a reduced number of hours without first having a written statement from the Division which defines the exact number of hours the student needs; *05/30/2007*

8.4.1.5 not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the real estate profession. A school shall not make disparaging remarks about a competitor's services or methods of operation; *05/30/2007*

8.4.1.6 limit approved guest lecturers who are experts in related fields to a total of 20% of the instructional hours per approved course. A guest lecturer shall provide evidence of professional qualifications to the Division prior to being used as a guest lecturer; *05/30/2007*

8.4.1.7 within 15 calendar days after the occurrence of any material change in the school which would affect its approval, the school shall give the Division written notice of that change; *05/30/2007*

8.4.1.8 not attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank; *05/30/2007*

8.4.1.9 not give any valuable consideration to a real estate brokerage for having referred students to the school. A school shall not accept valuable consideration from a brokerage for having referred students to the brokerage; *05/30/2007*

8.4.1.9.1 If the school agrees, real estate brokerages may be allowed to solicit for agents at the school. No solicitation may be made during the class time nor during the student break time. Solicitation may be made only after the regularly scheduled class so that no student will be obligated to stay for the solicitation; *05/30/2007*

8.4.1.10 use only certified instructors or guest lecturers who have been registered with the Division; *05/30/2007*

8.4.1.11 provide the instructor with the approved content outline for each course and shall assure the content has been taught; *05/30/2007*

8.4.1.12 provide a course completion certificate in the form approved by the Division to each student upon the student's completion of the prelicensing course; *05/30/2007*

8.4.1.13 furnish to the Division a current roster of the school's approved instructors and guest lecturers. A school shall provide an updated roster to the Division each time there is a change in school instructors or guest lecturers; *05/30/2007*

8.4.1.14 give no more than eight credit hours per day to any student; *05/30/2007*

8.4.1.15 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating: a) applicants for licensure must disclose any criminal history by answering a questionnaire as part of the pre-license exam; b) applicants for licensure must submit fingerprint cards to the Division and consent to a criminal background check; c) licenses issued by the Division are conditional pending the completion of the background check and that failure to accurately disclose a criminal history will result in an immediate and automatic license revocation; d) applicants with a criminal history described in subsection R162-2-2(2.2.9) do not qualify for a license; and e) applicants with a criminal history other than as described in subsection R162-2-2(2.2.9) will be considered on a

case-by-case basis and may be required to appear at an administrative hearing to determine qualifications for licensure. *04/07/2008*

8.4.1.15.1 The school shall be required to obtain the student's signature on the written disclosure required by Section 8.4.1.15 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the Division for a minimum of three years following the date upon which the student completed the prelicensing course; and *05/30/2007*

8.4.2 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state statutes and administrative rules regarding school and instructor certification. *05/30/2007*

R162-8-5. Instructor Application for Certification.

8.5 An instructor shall not teach a prelicensing course without having been certified by the Division prior to teaching. Applicants shall apply for instructor certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at minimum the following information which will be used in determining approval: *05/30/2007*

8.5.1 Name and certification number of the certified prelicense school for which the applicant will work; *05/30/2007*

8.5.2 Evidence of a minimum educational level of graduation from high school or its equivalent; *05/30/2007*

8.5.3 Evidence of any combination of at least five years of full time experience and/or college-level education related to the course subject; *05/30/2007*

8.5.4 Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Division Instructor Development Workshops totaling at least two days in length; and *05/30/2007*

8.5.5 Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught; *05/30/2007*

8.5.6 To teach the sales agent prelicensing course, evidence of being a licensed sales agent or broker; *05/30/2007*

8.5.7 To teach the broker prelicensing course, evidence of being a licensed associate broker, branch broker, or principal broker; *05/30/2007*

8.5.7.1 An applicant may qualify to teach a subcourse of the broker prelicensing course by meeting the following criteria: *05/30/2007*

- (a) Brokerage Management. The instructor applicant must be a licensed real estate broker and have managed a real estate office, or hold a CRB or equivalent professional designation in real estate brokerage management. The instructor applicant must have at least two years practical experience as an active real estate principal broker. *05/30/2007*
- (b) Advanced Real Estate Law. The instructor applicant must be a licensed real estate broker or be a current member of the Utah State Bar or have graduated from an American Bar Association accredited law school and have at least two years real estate law experience. *05/30/2007*
- (c) Advanced Appraisal. The instructor applicant must be a licensed real estate broker, or be a state-licensed or state-certified appraiser. *05/30/2007*
- (d) Advanced Finance. The instructor applicant must be a licensed real estate broker or have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance. *05/30/2007*
- (e) Advanced Property Management. The instructor applicant must be a real estate licensee. The instructor applicant must have at least two years property management experience or hold a CPM or equivalent professional designation. The instructor applicant must have at least two years full-time experience as a property manager. *05/30/2007*

8.5.8 A signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative; *05/30/2007*

8.5.9 A signed statement agreeing not to market personal sales product; and *05/30/2007*

8.5.10 Any other information as the Division may require. *05/30/2007*

R162-8-6. Determining Fitness for Instructor Certification.

8.6 The Division, with the concurrence of the Commission, shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency. *05/30/2007*

R162-8-7. Instructor Certification Renewal.

8.7 The term of a prelicensing education instructor certification is twenty-four months. A certification may be renewed by submitting all forms and fees required by the Division prior to the certification's expiration date. *05/30/2007*

8.7.1 Certifications not properly renewed shall expire on the expiration date. *05/30/2007*

8.7.1.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee. *05/30/2007*

8.7.1.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee. *05/30/2007*

8.7.1.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification. *05/30/2007*

8.7.2 To renew an instructor certification an instructor shall, during the two years prior to renewal: *05/30/2007*

8.7.2.1 teach at least 20 hours of in-class instruction in a certified real estate course; and *05/30/2007*

8.7.2.2 attend an instructor development workshop sponsored by the Division. *05/30/2007*

R162-9. Continuing Education.

R162-9-1. Course Application for Certification.

9.1 Continuing education credit shall be given to students only for courses that are certified by the Division at the time the courses are taught. Course sponsors shall apply for course certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval: *05/30/2007*

9.1.1 Name and contact information of the course sponsor and the name of the entity through which the course will be provided; *05/30/2007*

9.1.2 A description of the physical facility where the course will be taught;

9.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in a private residence. *05/30/2007*

9.1.3 The title of the course; *05/30/2007*

9.1.4 The proposed amount of credit hours for the course; *05/30/2007*

9.1.4.1 A credit hour is defined as 50 minutes within a 60-minute time period; *06/23/2008*

9.1.4.2 The minimum length of a course shall be one credit hour; *06/23/2008*

9.1.5 A statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; *05/30/2007*

9.1.6 A course outline including, for each segment of no more than 15 minutes, a description of the subject matter; *05/30/2007*

9.1.7 A minimum of three learning objectives for every three hours of class time; *05/30/2007*

9.1.8 The name and certification number of each certified instructor who will teach the course; *05/30/2007*

9.1.9 Identification of whether the method of instruction will be traditional education or distance education; *05/30/2007*

9.1.9.1 A sponsor seeking certification of a distance education course shall: *05/30/2007*

9.1.9.1.1 submit to the Division a complete description of all course delivery methods and all media to be used; *05/30/2007*

9.1.9.1.2 provide course access to the Division using the same delivery methods and media that will be provided to the students; *05/30/2007*

9.1.9.1.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives; *05/30/2007*

9.1.9.1.4 describe how and when instructors will be available to answer student questions; and *05/30/2007*

9.1.9.1.5 provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims. *05/30/2007*

9.1.10 Copies of all materials to be distributed to the participants; *05/30/2007*

9.1.11 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy; *05/30/2007*

9.1.12 Except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll; *05/30/2007*

9.1.13 A sample of the completion certificate which shall bear the following information: *05/30/2007*

- (a) A Space for the licensee's name, type of license and license number, date of course; *06/23/2008*
- (b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date; and *05/30/2007*
- (c) A Space for signature of the course sponsor and a space for the licensee's signature. *06/23/2008*

9.1.14 A signed statement agreeing not to market personal sales products; *05/30/2007*

9.1.15 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative; *05/30/2007*

9.1.16 A signed statement agreeing to upload, within 10 days after the end of a course offering, to the database specified by the Division, the course name, course certificate number assigned by the Division, the date the course was taught, the number of credit hours, and the names and license numbers of all students receiving continuing education credit; *06/23/2008*

9.1.16.1 A course sponsor is not responsible for uploading information for students who fail to provide an accurate name or license number registered with the Division. *05/30/2007*

9.1.16.2 Continuing education credit will not be given to any student who fails to provide to a course sponsor an accurate name or license number registered with the Division within 7 days of attending the course; and *06/23/2008*

9.1.17 Any other information as the Division may require. *05/30/2007*

R162-9-2. Determining Fitness for Course Certification.

9.2 The Division shall certify continuing education courses as either "core" or "elective" based on the course's intellectual and practical content and whether the course increases the licensee's competency, knowledge, professionalism and ability to protect and serve the public. The approval of courses is determined at the discretion of the Division. Course providers who has a course denied by the Division may appeal that decision to the Real Estate Commission. *08/21/2009*

9.2.1 Courses in the following subjects may be certified as "core": state approved forms/contracts, other industry used forms or contracts, ethics, agency, short sales or bank owned property sales, environmental hazards, property management, prevention of real estate and mortgage fraud, federal and state real estate laws or administrative rules, and brokers' trust accounts. *08/21/2009*

9.2.1.1 If a course regarding an industry used form or contract is approved by the Division as a "core" course, the provider of the course must:

- (a) have ownership or written authorization to use the form(s) or contract(s) taught in the course; and
- (b) have authority and grant permission to licensees for use of the form(s) or contract(s) used in the course by all licensees. *08/21/2009*

9.2.1.2 The owner of the form(s) or contract(s) may charge a reasonable fee for use of these form(s) or contract(s) by licensees. *08/21/2009*

9.2.2 Courses in the following subjects may be certified as "elective": *05/30/2007*

9.2.2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; real estate market measures and evaluation; real estate appraising; market analysis, the measurement of homes or buildings, accounting and taxation as applied to real property; estate building and portfolio management for clients; settlement statements; real estate mathematics; *08/21/2009*

9.2.2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; resort and recreational properties; farm and ranch properties; real property exchanging; legislative issues that influence real estate practice; real estate license law and administrative rules; *05/30/2007*

9.2.2.3 Land development; land use, planning and zoning; construction; energy conservation in buildings; water rights; *08/21/2009*

9.2.2.4 Landlord/tenant relationships; property disclosure forms; *08/21/2009*

9.2.2.5 Americans with Disabilities Act; Fair housing; affirmative marketing; *05/30/2007*

9.2.2.6 Commercial real estate; Tenants-in-Common; *05/30/2007*

9.2.2.7 Courses that focus on real estate concepts, principles, or industry practices or procedures, if the courses enhance licensee professional skills and thereby advance public protection and safety; *08/21/2009*

9.2.2.8 Professional development, business success, customer relation skills, or sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques related to real estate knowledge, servicing clients, communication skills; *05/30/2007*

9.2.2.9 Personal and property protection for licensees and their clients; and *05/30/2007*

9.2.2.10 Any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education. *05/30/2007*

9.2.3 Non-acceptable course subject matter includes topics such as: *05/30/2007*

9.2.3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, language report writing, advertising, technology courses with a principal focus on technology operation, software design or use, or similar offerings; *08/21/2009*

9.2.3.2 Physical well-being, personal motivation, stress management, dress-for-success, or similar offerings; *05/30/2007*

9.2.3.3 Meetings held in conjunction with the general business of the licensee and his broker, employer or trade organization, such as sales meetings, in-house staff or licensee training meetings, or member orientation for professional organizations; *05/30/2007*

9.2.3.4 Courses in wealth creation or retirement planning for licensees; and *05/30/2007*

9.2.3.5 Courses that are specifically designed for exam preparation. *05/30/2007*

R162-9-3. Course Certification Renewal.

9.3 Course certifications are valid for a period of two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification. Certifications not properly renewed shall expire on the expiration date. *05/30/2007*

9.3.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee. *05/30/2007*

9.3.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee. *05/30/2007*

9.3.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification. *05/30/2007*

R162-9-4. Conduct and Standards of Practice.

9.4 In order to maintain good standing and renew a certification, a course sponsor shall: *05/30/2007*

9.4.1 Upon completion of a course offering, provide a certificate of completion, in the form required by the Division, to those students who attend a minimum of 90% of the required class time; *05/30/2007*

9.4.2 Maintain for three years a record of registration of each person completing an offering and any other prescribed information regarding the offering, including exam results, if any; *05/30/2007*

9.4.3 For distance education courses, give education credit only to students who complete the course within one year of the registration date; *05/30/2007*

9.4.4 Notify the Division in writing within 15 days of any material change in a certified course, for example, curriculum, course length, instructor, refund policy, etc.; and *05/30/2007*

9.4.5 Upon completion of a course offering, provide to each student a course evaluation, in the form required by the Division, and submit the completed course evaluations to the Division within 10 days. *05/30/2007*

R162-9-5. Instructor Application for Certification.

9.5 Continuing education credit shall be given to students only for courses that are taught by an instructor who is certified by the Division at the time the courses are taught. Applicants shall apply for instructor certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval: *05/30/2007*

9.5.1 Name and contact information of the applicant; *05/30/2007*

9.5.2 Evidence of a minimum education level of graduation from high school or its equivalent; *05/30/2007*

9.5.3 Evidence of any combination of at least three years of full time experience and/or college- level education related to the course subject; *05/30/2007*

9.5.4 Evidence of at least twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at the Division's Instructor Development Workshops totaling at least two days in length; *05/30/2007*

9.5.5 A signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative; *05/30/2007*

9.5.6 A signed statement agreeing not to market personal sales products; and *05/30/2007*

9.5.7 Any other information as the Division may require. *05/30/2007*

R162-9-6. Determining Fitness for Instructor Certification.

9.6 The Division with the concurrence of the Commission shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency. *05/30/2007*

R162-9-7. Instructor Certification Renewal.

9.7 Instructor certifications are valid for a period of two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification. *05/30/2007*

9.7.1 Certifications not properly renewed shall expire on the expiration date. *05/30/2007*

9.7.1.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee. *05/30/2007*

9.7.1.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and paying a non-refundable reinstatement fee. *05/30/2007*

9.7.1.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification. *05/30/2007*

9.7.2 To renew an instructor certification an instructor must teach, during the previous renewal period, a minimum of 12 continuing education credit hours. *05/30/2007*

9.7.2.1 If the instructor has not taught a minimum of 12 hours during the previous renewal period, written explanation outlining the reason for not meeting the requirement and satisfactory documentation of the applicant's present level of expertise shall be provided to the Division. *05/30/2007*

R162-9-8. Marketing of Continuing Education Courses.

9.8.1 A course sponsor may not advertise or market a continuing education course where Division continuing education course credit will be offered or provided to a licensed attendee unless the course: *06/23/2008*

- (a) is approved and has been issued a current continuing education course certification number by the Division; and *06/23/2008*
- (b) is advertised with the continuing education course certification number issued by the Division displayed in all advertising materials. *06/23/2008*

9.8.2 A course sponsor may not advertise, market, or promote a continuing education course with language which indicates Division continuing education course approval is "pending" or otherwise forthcoming. *06/23/2008*

R162-10. Administrative Procedures.

10.1. Any adjudicative proceeding as to the following matters shall be conducted as a formal adjudicative proceeding: *04/19/2006*

10.1.1. The revocation or suspension of any registration issued pursuant to the Time Share and Camp Resort Act, or the imposition of a fine against the registrant. *04/19/2006*

10.1.2. The revocation or suspension of any registration issued pursuant to the Utah Uniform Land Sales Practices Act, or the imposition of a fine against the registrant. *04/19/2006*

10.1.3. Any proceedings conducted subsequent to the issuance of cease and desist orders. *04/19/2006*

R162-10-2. Informal Adjudicative Proceedings.

10.2. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis: *1990*

10.2.1. The issuance of a real estate license, the renewal of an active, inactive or expired license, or the activation of an inactive license. *1990*

10.2.2. Any action on a sales agent's license based upon the revocation or suspension of a principal broker's license or the failure of the principal broker to renew his license. *03/03/1994*

10.2.3. The issuance of renewal or certification of real estate schools or instructors. *1990*

10.2.4. The revocation of a real estate license due to payment made from the Real Estate Recovery Fund. *1990*

10.2.5. The issuance or renewal of registration pursuant to the Land Sales Practices Act. *06/21/2006*

10.2.6. The exemption from, or the amendment of, registration pursuant to the Land Sales Practices Act. *1990*

10.2.7. The issuance or renewal of any registration pursuant to the Time Share and Camp Resort Act. *1990*

10.2.8. Any waiver of, or exemption from, registration requirements pursuant to the Time Share and Camp Resort Act. *1990*

10.2.9. The issuance of any declaratory order determining the applicability of a statute, rule or order when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division of Real Estate. *03/03/1994*

10.2.10. The post-revocation hearing following the revocation of license pursuant to Utah Code Section 61-2-9(1)(e)(i) for failure to accurately disclose a criminal history.

04/23/1998

10.2.11. A hearing on whether or not a licensee or certificate holder whose license or certificate was issued or renewed on probationary status has violated the condition of that probation. *03/20/2000*

10.2.12. Except as provided in Section 63G-4-502, a disciplinary action commenced by the Division following investigation of a complaint. *06/21/2006*

R162-10-3. Proceedings Not Designated.

10.3. All adjudicative proceedings as to any other matters not specifically listed herein shall be conducted on an informal basis. *1990*

R162-10-4. Hearings Required in Informal Adjudicative Proceedings.

10.4.1 A post-revocation hearing will be held if a licensee whose license has been automatically revoked pursuant to U.C.A. Section 61-2-9(1)(e)(i) files a timely request for a hearing to challenge the revocation. *06/21/2006*

10.4.2 Hearings will be held in all proceedings commenced by the Division for disciplinary action pursuant to U.C.A. Section 61-2-12 following investigation of a complaint by the Division. *06/21/2006*

R162-10-5. Procedures for Hearings in All Informal Adjudicative Proceedings.

10.5.1 The procedures to be followed in all informal adjudicative proceedings shall be as set forth in Title 63G, Chapter 4, Utah Administrative Procedures Act, the Department of Commerce Administrative Procedures Act Rules, Utah Administrative Code Section R151-46b, and in this Section R162-10-5. *06/21/2006*

10.5.2 Assistance of Administrative Law Judge. In any proceeding under this subsection, the Commission and the Division may, but shall not be required to, delegate a hearing to an Administrative Law Judge or request that an Administrative Law Judge assist the Commission and the Division in conducting the hearing. Any delegation of a hearing to an Administrative Law Judge or any request for assistance from an Administrative Law Judge shall be in writing. *06/21/2006*

10.5.3 Discovery. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary and relevant evidence upon written request to the Division. Parties shall have access to information gathered during an investigation by the Division to the extent permitted by Title 63G, Chapter 2, Government Records Access and Management Act, and other applicable laws. The Division shall provide the information within 15 days of receipt of the written request. Information that will not be provided by the Division to a party includes the Division's Investigative Report, draft

documents, attorney/client communications, materials containing an attorney's work product, materials containing the investigators' thought processes or analysis, or internal Division forms and memoranda. The Division may decline to provide a party with information it has already provided to that party. *06/21/2006*

10.5.4 Intervention. Intervention is prohibited. *06/21/2006*

10.5.5 Notice of hearing. Upon the scheduling of a hearing by the Division, the Division shall mail written notice of the date, time, and place scheduled for the hearing. If the respondent in a proceeding commenced by the Division is an actively licensed sales agent or associate broker, the Division shall mail a copy of the notice of hearing to the principal broker with whom the respondent is licensed. *06/21/2006*

10.5.6 Hearings. Hearings shall be open to all parties, except that a hearing may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63G, Chapter 4, the Utah Administrative Procedures Act or Title 52, Chapter 4, the Open and Public Meetings Act. *06/21/2006*

10.5.7 Witnesses. A party to a proceeding may request that the Division subpoena witnesses or documents on the party's behalf by making a written request to the Division. The Division will thereafter generate the witness subpoenas and furnish them to the party requesting them. The party who has requested that a witness be subpoenaed shall bear the cost of service of the subpoena upon the witness, and the witness fee and mileage to be paid to the witness. *06/21/2006*

10.5.8 Representation by counsel. The respondent in a proceeding commenced by the Division, or the requestor in a proceeding commenced by a request for agency action, may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues. *06/21/2006*

10.5.9 Record. The Division shall cause a record to be made of the hearing by audio or video recorder, or by a certified shorthand reporter. Any party to the proceeding, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the proceedings. *06/21/2006*

10.5.10 Orders. Within a reasonable time after the close of a proceeding, the presiding officer shall issue a signed order in writing that states the decision, the reasons for the decision, a notice of any right of administrative or judicial review available to the parties, and the time limits for filing an appeal or requesting a review. The Order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at the hearing. A copy of the Order shall be promptly mailed or delivered to each of the parties. *06/21/2006*

R162-10-6. Additional Procedures for Disciplinary Proceedings Commenced by the Division.

10.6 The following additional procedures shall apply to disciplinary proceedings commenced by the Division pursuant to U.C.A. Section 61-2-12 following the investigation by the Division of a complaint: *06/21/2006*

10.6.1 Notice of Agency Action and Petition. The proceeding shall be commenced by the Division filing and serving a Notice of Agency Action and a Petition setting forth the allegations made by the Division. *06/21/2006*

10.6.2 Answer. The presiding officer at the time the Petition is filed may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2-12 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days after the mailing date of the Notice of Agency Action and Petition. *06/21/2006*

10.6.3 Witness and Exhibit Lists. The Division shall provide its Witness and Exhibit Lists to the respondent at the time it mails its Notice of Hearing to the respondent. The respondent shall provide its Witness and Exhibits Lists to the Division no later than thirty days after the mailing date of the Division's Notice of Agency Action and Petition. *06/21/2006*

10.6.3.1 Contents of Witness List. A Witness List shall contain the name, address, and telephone number of each witness the party intends to call to testify at the hearing, and a summary of the testimony expected from the witness. *06/21/2006*

10.6.3.2 Contents of Exhibit List. An Exhibit List shall contain an identification of each document or other exhibit that the party intends to use at the hearing, and shall be accompanied by copies of the exhibits. *06/21/2006*

10.6.4 Pre-hearing Motions. Any pre-hearing motion permitted by Utah Administrative Code Section R151-46b, the Department of Commerce Administrative Procedures Act Rules, shall be made in accordance with those rules. The Director of the Division shall receive and rule upon any pre-hearing motions. *06/21/2006*

R162-11. Undivided Fractionalized Long-Term Estates.

R162-11-1. Authority and Definitions.

11.1.1 The following administrative rules are promulgated under the authority granted by Sections 61-2-5.5 and 61-2-26. *10/19/2006*

11.1.2 Terms used in these rules are defined as follows: *10/19/2006*

- (a) "Affiliate" means an individual or entity that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, a specified individual or entity. *10/19/2006*

- (b) "Entity" means any corporation, limited liability company, general or limited partnership, company association, joint venture, business trust, trust, or other organization. *10/19/2006*
- (c) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate. *10/19/2006*
- (d) "Undivided fractionalized long-term estate" is defined as in Section 61-2-2. *10/19/2006*

R162-11-2. Marketing Disclosures.

11.2.1 All real estate licensees who market an undivided fractionalized long-term estate shall obtain from the sponsor, and shall provide to purchasers in the form of written disclosures provided in a reasonable amount of time in advance of closing to allow adequate review by the purchaser, the following information: *10/19/2006*

11.2.1.1 Information concerning the sponsor and the sponsor's affiliates: *10/19/2006*

- (a) The financial strength of the sponsor and all affiliates, as evidenced by current certified financial statements and current credit reports, and information concerning any bankruptcies or civil suits; *10/19/2006*
- (b) Whether any affiliate of the sponsor is a third party service provider in the transaction, including mortgage brokers, mortgage lenders, loan originators, title service providers, attorneys, appraisers, document preparation services, providers of credit reports, property condition inspectors, settlement agents, real estate brokers or other marketing agents, insurance providers, and providers of any other services for which the investor will be required to pay. *10/19/2006*
- (c) Whether any affiliate of the sponsor is a master lease tenant or whether the sponsor is an affiliate of any master lease tenant. *10/19/2006*
- (d) Any use that will be made of purchaser proceeds. *10/19/2006*

11.2.1.2 Information concerning the real property in which the undivided fractionalized long-term estate is offered: *10/19/2006*

- (a) Material information concerning any leases or subleases affecting the real property; *10/19/2006*
- (b) Material information concerning any environmental issues affecting the real property; *10/19/2006*
- (c) A preliminary title report on the real property; *10/19/2006*
- (d) If available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter; *10/19/2006*
- (e) If applicable, rent rolls and operating history; *10/19/2006*
- (f) If applicable, loan documents; *10/19/2006*
- (g) The Tenants in Common agreement, or any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest; *10/19/2006*
- (h) All third party reports acquired by the sponsor; *10/19/2006*
- (i) A narrative appraisal report, with an effective date no more than 6 months prior to the date the offer of sale is made, that includes at

minimum pictures, type of construction, age of building, and site information such as improvements, parking, cross easements, site and location maps; *10/19/2006*

- (j) All material information concerning the market conditions for the property class; and *10/19/2006*
- (k) All material information concerning the demographics of the general market area. *10/19/2006*

11.2.1.3 Information concerning the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered: *10/19/2006*

- (a) Contact information for any existing or recommended asset managers and property managers; *10/19/2006*
- (b) Any relationship between the asset managers and the sponsor; *10/19/2006*
- (c) Any relationship between the property managers and the sponsor; and *10/19/2006*
- (d) Copies of any existing asset management agreements and any property management agreements. *10/19/2006*

11.2.2 All real estate licensees who market an undivided fractionalized long-term estate that is subject to a master lease shall obtain from the sponsor and provide to purchasers in a reasonable amount of time in advance of closing to allow adequate review by the purchaser, financial statements of the master lease tenant, audited according to generally accepted accounting principles. If the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, then the financial statements of the owners of that entity shall be furnished. *10/19/2006*

11.2.3 All real estate licensees who market an undivided fractionalized long-term estate shall, in a reasonable amount of time in advance of closing to allow adequate review by the purchaser: *10/19/2006*

- (a) disclose in writing to purchasers: *10/19/2006*
 - (i) that there may be tax consequences for a failure to close on the purchase; *10/19/2006*
 - (ii) that there may be risks involved in the purchase; and *10/19/2006*
- (b) shall advise purchasers that they should consult with tax advisors and other professionals for advice concerning these matters. *10/19/2006*

R162-11-3. Regulation D Offerings.

11.3 The Division and the Commission shall consider any offering of a fractionalized undivided long-term estate in real property that is compliant with Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 230.506 to be in compliance with these rules. *10/19/2006*

R162-12. Utah Housing Opportunity Restricted Account.

R162-12-1. Authority and Definitions.

12.1.1 The following administrative rules are promulgated under the authority granted by Sections 61-2-5.5(1)(a) and 61-2-28. *04/07/2008*

12.1.2 Terms used in these rules are defined as follows: *04/07/2008*

- (a) "Utah Housing Opportunity Restricted Account" means the restricted account created in the General Fund into which the following monies are deposited: contributions to the Department of Motor Vehicles for Utah Housing Opportunity special group license plates in accordance with Section 41-1a-422, private contributions, donations or grants from public or private entities, and interest and earnings on the funds in the account. *04/07/2008*
- (b) "Qualified entity" means a charitable organization that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code, and that provides support to organizations that create affordable housing for those in severe need as a primary part of their mission. *04/07/2008*

R162-12-2. Proposals.

12.2.1 No later than August 1 of each year, a qualified entity may apply to the Division for a distribution of funds from the Utah Housing Opportunity Restricted Account to be used to provide support to organizations that create affordable housing for those in severe need. *04/07/2008*

12.1.2 An applicants shall provide to the Division as part of an application: *04/07/2008*

- (a) contact information for the applicant;
- (b) proof that the entity is tax exempt under Section 501(c)(3), Internal Revenue Code;
- (c) proof that the entity provides support to organizations that create affordable housing for those in severe need as a primary part of its mission;
- (d) a statement of the purpose for which the application is submitted, along with an explanation of how the entity would use a disbursement of money to promote affordable housing for those in severe need; and
- (e) an explanation of the internal management controls and financial controls of the entity that would insure that any funds received would be used only for authorized purposes.

R162-12-3. Selection of Recipient.

12.3.1 The Division shall annually select one applicant to receive a distribution from the Utah Housing Opportunity Restricted Account. The Division shall select the recipient based on which applicant can, in the opinion of the Division, most effectively and efficiently use the funds to promote affordable housing for those in severe need.

04/07/2008

12.3.2 The disbursement to the successful applicant shall be made no later than December 31 each year. *04/07/2008*