



STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE

UTAH REAL ESTATE LICENSING AND PRACTICES
RULES

December 22, 2010

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R162-2f-101. Title and Authority.

- (1) This chapter is known as the "Real Estate Licensing and Practices Rules."
- (2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.
- (3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.
- (4) The authority to collect fees is granted by Section 61-2f-105.

R162-2f-102. Definitions.

- (1) "Active license" means a license granted to an applicant who:
 - (a) qualifies for licensure under Section 61-2f-203 and these rules;
 - (b) pays all applicable nonrefundable license fees; and
 - (c) affiliates with a principal brokerage.
- (2) "Advertising" means solicitation through:
 - (a) newspaper;
 - (b) magazine;
 - (c) Internet;
 - (d) e-mail;
 - (e) radio;
 - (f) television;
 - (g) direct mail promotions;
 - (h) business cards;
 - (i) door hangers;
 - (j) signs; or
 - (k) any other medium.
- (3) "Affiliate":
 - (a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and
 - (b) when used in reference to an undivided fractionalize long-term estate, 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.
- (4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.
- (5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.
- (6) "Brokerage" means a real estate sales or a property management company.
- (7) "Brokerage record" means any record related to the business of a principal broker, including:
 - (a) record of an offer to purchase real estate;
 - (b) record of a real estate transaction, regardless of whether the transaction closed;
 - (c) licensing records;
 - (d) banking and other financial records;

- (e) independent contractor agreements;
 - (f) trust account records; and
 - (g) records of the brokerage's contractual obligations.
- (8) "Business day" is defined in Subsection 61-2f-102(3).
- (9) "Certification" means authorization from the division to:
- (a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or
 - (b) function as an instructor for courses approved for prelicensing education or continuing education.
- (10) "Commission" means the Utah Real Estate Commission.
- (11) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:
- (a) core: topics identified in Subsection R162-2f-206c(5)(c); or
 - (b) elective: topics identified in Subsection R162-2f-206c(5)(e).
- (12) "Day" means calendar day unless specified as "business day."
- (13) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including:
- (a) computer conferencing;
 - (b) satellite teleconferencing;
 - (c) interactive audio;
 - (d) interactive computer software;
 - (e) Internet-based instruction; and
 - (f) other interactive online courses.
- (14) "Division" means the Utah Division of Real Estate.
- (15) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.
- (16) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:
- (a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or
 - (b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.
- (17) "Guaranteed sales plan" means:
- (a) a plan in which a seller's real estate is guaranteed to be sold; or
 - (b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:
 - (i) in the specified period of a listing; or
 - (ii) within some other specified period of time.
- (18) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:
- (a) voluntarily, with the assent of the license holder; or

- (b) involuntarily, without the assent of the license holder.
- (19) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.
- (20) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:
 - (a) subject to the terms of a limited agency agreement; and
 - (b) with the informed consent of all principals to the transaction.
- (21) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.
- (22) "Nonresident applicant" means a person:
 - (a) whose primary residence is not in Utah; and
 - (b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.
- (23) "Principal brokerage" means the main real estate or property management office of a principal broker.
- (24) "Principal" in a transaction means an individual who is represented by a licensee and may be:
 - (a) the buyer or lessee;
 - (b) an individual having an ownership interest in the property;
 - (c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or
 - (d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.
- (25) "Property management" is defined in Subsection 61-2f-102(18).
- (26) "Registration" means authorization from the division to engage in the business of real estate as:
 - (a) a corporation;
 - (b) a partnership;
 - (c) a limited liability company;
 - (d) an association;
 - (e) a dba;
 - (f) a professional corporation;
 - (g) a sole proprietorship; or
 - (h) another legal entity of a real estate brokerage.
- (27) "Reinstatement" is defined in Subsection 61-2f-102(21).
- (28) "Reissuance" is defined in Subsection 61-2f-102(22).
- (29) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees can submit certain licensing information to the division.
- (30) "Renewal" is defined in Subsection 61-2f-102(23).
- (31) "School" means:
 - (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;
 - (b) any community college or vocational-technical school;

- (c) any local real estate organization that has been approved by the commission as a school; or
- (d) any proprietary real estate school.
- (32) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.
- (33) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:
 - (a) mortgage brokers;
 - (b) mortgage lenders;
 - (c) loan originators;
 - (d) title service providers;
 - (e) attorneys;
 - (f) appraisers;
 - (g) providers of document preparation services;
 - (h) providers of credit reports;
 - (i) property condition inspectors;
 - (j) settlement agents;
 - (k) real estate brokers;
 - (l) marketing agents;
 - (m) insurance providers; and
 - (n) providers of any other services for which a principal or investor will be charged.
- (34) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.
- (35) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(25).

R162-2f-105. Fees.

Any fee collected by the division is nonrefundable.

R162-2f-201. Qualification for Licensure.

- (1) Character. Pursuant to Subsection 61-2f-203(1)(b), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.
 - (a) An applicant shall be denied a license for:
 - (i) a felony that resulted in:
 - (A) a conviction occurring within the five years preceding the date of application;
 - (B) a plea agreement occurring within the five years preceding the date of application; or
 - (C) a jail or prison term with a release date falling within the five years preceding the date of application; or
 - (ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:
 - (A) a conviction occurring within the three years preceding the date of application; or

- (B) a jail or prison term with a release date falling within the three years preceding the date of application.
- (b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:
 - (i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);
 - (ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;
 - (iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
 - (iv) court findings of fraudulent or deceitful activity;
 - (v) evidence of non-compliance with court orders or conditions of sentencing; and
 - (vi) evidence of non-compliance with:
 - (A) terms of a diversion agreement not yet closed and dismissed;
 - (B) a probation agreement; or
 - (C) a plea in abeyance.
- (2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:
 - (a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
 - (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
 - (c) suspension or revocation of a professional license;
 - (d) sanctions placed on a professional license; and
 - (e) investigations conducted by regulatory agencies relative to a professional license.
- (3) Age. An applicant shall be at least 18 years of age.
- (4) Minimum education. An applicant shall have:
 - (a) a high school diploma;
 - (b) a GED; or
 - (c) equivalent education as approved by the commission.

R162-2f-202a. Sales Agent Licensing Fees and Procedures.

- (1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:
 - (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
 - (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
 - (c)
 - (i) successfully complete 120 hours of approved prelicensing education;
 - (ii) evidence current membership in the Utah State Bar; or
 - (iii) apply to the division for waiver of all or part of the education requirement by virtue of:

- (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
 - (B) completing other equivalent real estate education within the 12-month period prior to the date of application;
 - (d) (i) apply with a testing service designated by the division to sit for the licensing examination; and
 - (ii) pay a nonrefundable examination fee to the testing center;
 - (e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
 - (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
 - (i) documentation indicating successful completion of the required prelicensing education;
 - (ii) a report of the examination showing a passing score for each component of the examination; and
 - (iii) the applicant's business, home, and e-mail addresses;
 - (g) if applying for an active license, affiliate with a principal broker; and
 - (h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
- (2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:
- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
 - (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
 - (c) (i) successfully complete 120 hours of approved prelicensing education;
 - (ii) evidence current membership in the Utah State Bar; or
 - (iii) apply to the division for waiver of all or part of the education requirement by virtue of:
 - (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;
 - (B) completing other equivalent real estate education within the 12-month period prior to the date of application; or
 - (C) having been licensed in a state that has substantially equivalent prelicensing education requirements;
 - (d) (i) apply with a testing service designated by the division to sit for the licensing examination; and
 - (ii) pay a nonrefundable examination fee to the testing center;
 - (e) (i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination; or
 - (ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:

- (A) take and pass the state component of the licensing examination; and
 - (B) apply to the division for a waiver of the national component of the licensing examination;
 - (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
 - (i) documentation indicating successful completion of the required prelicensing education;
 - (ii) a report of the examination showing a passing score for each component of the examination; and
 - (iii) the applicant's business, home, and e-mail addresses;
 - (g) provide from any state where licensed:
 - (i) a written record of the applicant's license history; and
 - (ii) complete documentation of any disciplinary action taken against the applicant's license;
 - (h) if applying for an active license, affiliate with a principal broker; and
 - (i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
- (3) Deadlines.
- (a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:
 - (i) within six months of the date on which the individual achieves a passing score on the passed component; and
 - (ii) within 12 months of the date on which the individual completes the prelicensing education.
 - (b) An application for licensure shall be submitted:
 - (i) within 90 days of the date on which the individual achieves passing scores on both examination components; and
 - (ii) within 12 months of the date on which the individual completes the prelicensing education.
 - (c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202b. Principal Broker Licensing Fees and Procedures.

- (1) To obtain a Utah license to practice as a principal broker, an individual shall:
 - (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
 - (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
 - (c)
 - (i) successfully complete 120 hours of approved prelicensing education, including:
 - (A) 45 hours of broker principles;
 - (B) 45 hours of broker practices; and
 - (C) 30 hours of Utah law and testing; or

- (ii) apply to the division for waiver of all or part of the education requirement by virtue of:
 - (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
 - (B) completing other equivalent real estate education within the 12-month period prior to the date of application;
- (d) (i) apply with a testing service designated by the division to sit for the licensing examination; and
 - (ii) pay a nonrefundable examination fee to the testing center;
- (e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
- (f) (i) evidence the individual's having, within the five-year period preceding the date of application, a minimum of three years full-time experience as a real estate licensee, including at least two years experience selling, listing, or managing the following types of properties:
 - (A) one- to four-unit residential dwellings;
 - (B) apartments, 5 units or over;
 - (C) improved lots;
 - (D) vacant lands/subdivisions;
 - (E) hotels or motels;
 - (F) industrial or warehouse property;
 - (G) office buildings;
 - (H) retail buildings; or
 - (I) leases of commercial space; and
 - (ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 experience points as follows:
 - (A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2; and
 - (B) 0 to 15 points pursuant to the experience point table found in Appendix 3;
- (g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
 - (i) documentation indicating successful completion of the approved broker prelicensing education;
 - (ii) a report of the examination showing a passing score for each component of the examination; and
 - (iii) the applicant's business, home, and e-mail addresses;
- (h) provide from any state where licensed as a real estate agent or broker:
 - (i) a written record of the applicant's license history; and
 - (ii) complete documentation of any disciplinary action taken against the applicant's license;
- (i) if applying for an active license, affiliate with a registered company;
- (j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

- (k) establish a trust account pursuant to Section R162-2f-403.
- (2) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.
- (3) Deadlines.
 - (a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:
 - (i) within six months of the date on which the individual achieves a passing score on the passed component; and
 - (ii) within 12 months of the date on which the individual completes the prelicensing education.
 - (b) An application for licensure shall be submitted:
 - (i) within 90 days of the date on which the individual achieves passing scores on both examination components; and
 - (ii) within 12 months of the date on which the individual completes the prelicensing education.
 - (c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202c. Associate Broker Licensing Fees and Procedures.

To obtain a Utah license to practice as an associate broker, an individual shall:

- (1) comply with Subsections R162-2f-202b(1)(a) through (j); and
- (2) if applying for an active license, affiliate with a principal broker.

R162-2f-203. Inactivation and Activation.

- (1) Inactivation.
 - (a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.
 - (b) To voluntarily inactivate a principal broker license, the principal broker shall:
 - (i) prior to inactivating the license:
 - (A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and
 - (B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and
 - (ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.
 - (c) The license of a sales agent or associate broker is involuntarily inactivated upon:
 - (i) termination of the licensee's affiliation with a principal broker;
 - (ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or
 - (iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

- (d) The registration of an entity is involuntarily inactivated upon:
 - (i) termination of the entity's affiliation with a principal broker; or
 - (ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.
 - (e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.
 - (f) If the division or commission orders that a principal broker's license is to be suspended or revoked:
 - (i) the order shall state the effective date of the suspension or revocation; and
 - (ii) prior to the effective date, the entity shall:
 - (A) (I) affiliate with a new principal broker; and
 - (II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or
 - (B) (I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and
 - (II) comply with Subsection R162-2f-207(3)(c)(ii)(B).
- (2) Activation.
- (a) To activate a license, the holder of the inactive license shall:
 - (i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;
 - (ii) submit proof of:
 - (A) having been issued an active license at the time of last renewal;
 - (B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or
 - (C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;
 - (iii) (A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or
 - (B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and
 - (iv) pay a non-refundable activation fee.
 - (b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

R162-2f-204. License Renewal.

- (1) Renewal period and deadlines.
 - (a) A license issued under these rules is valid for a period of two years from the date of licensure.
 - (b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).
 - (c) In order to renew on time without incurring a late fee:

- (i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and
 - (ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:
 - (A) by the license expiration date, if that date falls on a day when the division is open for business; or
 - (B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.
- (2) Qualification for renewal.
- (a) Character and competency.
 - (i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.
 - (ii) An individual applying for a renewed license may not have:
 - (A) a felony conviction since the last date of licensure; or
 - (B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.
 - (b) Continuing education.
 - (i) To renew at the end of the first renewal cycle, an individual shall complete:
 - (A) the 12-hour new sales agent course certified by the division; and
 - (B) an additional six non-duplicative hours of continuing education:
 - (I) certified by the division as either core or elective; or
 - (II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).
 - (ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:
 - (A) complete 18 non-duplicative hours of continuing education:
 - (I) certified by the division;
 - (II) including at least nine non-duplicative hours of core curriculum; and
 - (III) taken during the previous license period; or
 - (B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:
 - (I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and
 - (II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

- (iii) (A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).
 - (B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:
 - (I) filing a complaint against the provider; and
 - (II) submitting the course completion certificate to the division.
 - (c) Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:
 - (i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and
 - (ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.
- (3) Renewal and reinstatement procedures.
 - (a) To renew a license, an applicant shall, prior to the expiration of the license:
 - (i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and
 - (ii) pay a nonrefundable renewal fee.
 - (b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) - (d):
 - (i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and
 - (ii) pay a nonrefundable reinstatement fee.
- (4) Transition to online renewal. As of January 1, 2011, an individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration of Entity.

- (1) A principal broker shall not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.
- (2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:
 - (a) a model home;
 - (b) a project sales office; and
 - (c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.
- (3) To register an entity with the division, a principal broker shall:
 - (a) evidence that the name of the entity is registered with the Division of Corporations;
 - (b) certify that the entity is affiliated with a principal broker who:

- (i) is authorized to use the entity name; and
 - (ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;
 - (c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;
 - (d) submit an application that includes:
 - (i) the physical address of the entity;
 - (ii) if the entity is a branch office, the name and license number of the branch broker;
 - (iii) the names of associate brokers and sales agents assigned to the entity; and
 - (iv) the location and account number of any real estate trust account in which funds received at the registered location will be deposited; and
 - (e) pay a nonrefundable application fee.
- (4) Restrictions.
- (a)
 - (i) The division shall not register an entity proposing to use a business name that is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company.
 - (ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.
 - (b) A branch office shall operate under the same business name as the principal brokerage.
 - (c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.
- (5) Registration not transferable.
- (a) A registered entity shall not transfer the registration to any other person.
 - (b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.
 - (c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.
 - (d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-206a. Certification of Real Estate School.

- (1) Prior to offering real estate prelicensing or continuing education, a school shall:
 - (a) obtain division approval of the school name; and
 - (b) certify the school with the division pursuant to this Subsection (2).
- (2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:
 - (a) contact information, including:
 - (i) name, phone number, and address of the physical facility;
 - (ii) name, phone number, and address of each school director;
 - (iii) name, phone number, and address of each school owner; and
 - (iv) an e-mail address where correspondence will be received by the school;

- (b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);
 - (c) evidence that the school name as approved by the division pursuant to this Subsection (1)(a) is registered with the Division of Corporations and Commercial Code as a real estate education provider;
 - (d) school description, including:
 - (i) type of school; and
 - (ii) description of the school's physical facilities;
 - (e) list of courses offered;
 - (f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;
 - (g) proof that each instructor is:
 - (i) certified by the division;
 - (ii) qualified as a guest lecturer by having:
 - (A) requisite expertise in the field; and
 - (B) approval from the division; or
 - (iii) exempt from certification under Subsection R162-2f-206d(4);
 - (h) schedule of courses offered, including the days, times, and locations of classes;
 - (i) statement of attendance requirements as provided to students;
 - (j) refund policy as provided to students;
 - (k) disclaimer as provided to students;
 - (l) criminal history disclosure statement as provided to students; and
 - (m) any other information the division requires.
- (3) Minimum standards.
- (a) The course schedule may not provide or allow for more than eight credit hours per student per day.
 - (b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.
 - (c) The disclaimer shall adhere to the following requirements:
 - (i) be typed in all capital letters at least 1/4 inch high; and
 - (ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."
 - (d) The criminal history disclosure statement shall:
 - (i) be provided to each student prior to the school accepting payment; and
 - (ii) clearly inform the student that upon application with the division, the student will be required to:
 - (A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;
 - (B) submit fingerprint cards to the division and consent to a criminal background check; and
 - (C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

- (iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and
 - (iv) include a section for the student's attestation that the student has read and understood the disclosure.
- (e) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide to the division written notice of the change.
- (4) (a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a school certification, an applicant shall:
- (i) complete a renewal application as provided by the division; and
 - (ii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:
- (i) comply with all requirements for a timely renewal; and
 - (ii) pay a nonrefundable late fee.
- (d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:
- (i) comply with all requirements for a timely renewal; and
 - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206b. Certification Prelicensing Course.

- (1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:
- (a) comprehensive course outline including:
 - (i) description of the course;
 - (ii) number of class periods spent on each subject area;
 - (iii) minimum of three to five learning objectives for every three hours of class time; and
 - (iv) reference to the course outline approved by the commission for each topic;
 - (b) number of quizzes and examinations;
 - (c) grading system, including methods of testing and standards of grading;
 - (d) (i) a copy of at least two final examinations to be used in the course;
 - (ii) the answer key(s) used to determine if a student has passed the exam; and
 - (iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and
 - (e) a list of the titles, authors and publishers of all required textbooks.

- (2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:
 - (a) all items listed in this Subsection (1);
 - (b) description of each method of course delivery;
 - (c) description of any media to be used;
 - (d) course access for the division using the same delivery methods and media that will be provided to the students;
 - (e) description of 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;
 - (f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;
 - (g) description of how and when certified prelicensing instructors will be available to answer student questions; and
 - (h) 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.
- (3) Minimum standards. A prelicensing course shall:
 - (a) address each topic required by the course outline as approved by the commission;
 - (b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(c)(i) and these rules;
 - (c) limit the credit that students may earn to no more than eight credit hours per day;
 - (d) be taught in an appropriate classroom facility unless approved for distance education;
 - (e) allow a maximum of 10% of the required class time for testing, including:
 - (i) practice tests; and
 - (ii) a final examination; and
 - (f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline.
- (4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

R162-2f-206c. Certification of Continuing Education Course.

- (1) (a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.
- (b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

- (2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:
- (a) name and contact information of the course provider;
 - (b) name and contact information of the entity through which the course will be provided;
 - (c) description of the physical facility where the course will be taught;
 - (d) course title;
 - (e) number of credit hours;
 - (f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:
 - (i) knowledge;
 - (ii) professionalism; and
 - (iii) ability to protect and serve the public;
 - (g) course outline including a description of the subject matter covered in each 15-minute segment;
 - (h) a minimum of three learning objectives for every three hours of class time;
 - (i) name and certification number of each certified instructor who will teach the course;
 - (j) copies of all materials to be distributed to participants;
 - (k) signed statement in which the course provider and instructor(s):
 - (i) agree not to market personal sales products;
 - (ii) allow the division or its representative to audit the course on an unannounced basis; and
 - (iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:
 - (A) course name;
 - (B) course certificate number assigned by the division;
 - (C) date(s) the course was taught;
 - (D) number of credit hours; and
 - (E) names and license numbers of all students receiving continuing education credit;
 - (l) procedure for pre-registration;
 - (m) tuition or registration fee;
 - (n) cancellation and refund policy;
 - (o) procedure for taking and maintaining control of attendance during class time;
 - (p) sample of the completion certificate;
 - (q) nonrefundable fee for certification as required by the division; and
 - (r) any other information the division requires.
- (3) To certify a continuing education course for distance education, a person shall:
- (a) comply with this Subsection (2);
 - (b) submit to the division a complete description of all course delivery methods and all media to be used;
 - (c) provide course access for the division using the same delivery methods and media that will be provided to the students;

- (d) 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;
 - (e) describe how and when certified instructors will be available to answer student questions; and
 - (f) 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.
- (4) Minimum standards.
- (a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.
 - (b) The minimum length of a course shall be one credit hour.
 - (c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.
 - (d) The completion certificate shall allow for entry of the following information:
 - (i) licensee's name;
 - (ii) type of license;
 - (iii) license number;
 - (iv) date of course;
 - (v) name of the course provider;
 - (vi) course title;
 - (vii) number of credit hours awarded;
 - (viii) course certification number;
 - (ix) course certification expiration date;
 - (x) signature of the course sponsor; and
 - (xi) signature of the licensee.
- (5) Certification procedures.
- (a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.
 - (b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.
 - (c) Core topics include the following:
 - (i) state approved forms and contracts;
 - (ii) other industry used forms or contracts;
 - (iii) ethics;
 - (iv) agency;
 - (v) short sales or sales of bank-owned property;
 - (vi) environmental hazards;
 - (vii) property management;
 - (viii) prevention of real estate and mortgage fraud;
 - (ix) federal and state real estate laws;
 - (x) division administrative rules; and
 - (xi) broker trust accounts;
 - (d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

- (i) obtain authorization to use the form(s) or contract(s) taught in the course;
 - (ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and
 - (iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.
- (e) Elective topics include the following:
- (i) real estate financing, including mortgages and other financing techniques;
 - (ii) real estate investments;
 - (iii) real estate market measures and evaluation;
 - (iv) real estate appraising;
 - (v) market analysis;
 - (vi) measurement of homes or buildings;
 - (vii) accounting and taxation as applied to real property;
 - (viii) estate building and portfolio management for clients;
 - (ix) settlement statements;
 - (x) real estate mathematics;
 - (xi) real estate law;
 - (xii) contract law;
 - (xiii) agency and subagency;
 - (xiv) real estate securities and syndications;
 - (xv) regulation and management of timeshares, condominiums, and cooperatives;
 - (xvi) resort and recreational properties;
 - (xvii) farm and ranch properties;
 - (xviii) real property exchanging;
 - (xix) legislative issues that influence real estate practice;
 - (xx) real estate license law;
 - (xxi) division administrative rules;
 - (xxii) land development;
 - (xxiii) land use;
 - (xxiv) planning and zoning;
 - (xxv) construction;
 - (xxvi) energy conservation in buildings;
 - (xxvii) water rights;
 - (xxviii) landlord/tenant relationships;
 - (xxix) property disclosure forms;
 - (xxx) Americans with Disabilities Act;
 - (xxxi) fair housing;
 - (xxxii) affirmative marketing;
 - (xxxiii) commercial real estate;
 - (xxxiv) tenancy in common;
 - (xxxv) professional development;
 - (xxxvi) business success;
 - (xxxvii) customer relation skills;

- (xxxviii) sales promotion, including:
 - (A) salesmanship;
 - (B) negotiation;
 - (C) sales psychology;
 - (D) marketing techniques related to real estate knowledge;
 - (E) servicing clients; and
 - (F) communication skills;
 - (xxxix) personal and property protection for licensees and their clients;
 - (xl) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety; and
 - (xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education.
- (f) Unacceptable topics include the following:
- (i) offerings in mechanical office and business skills, including:
 - (A) typing;
 - (B) speed reading;
 - (C) memory improvement;
 - (D) language report writing;
 - (E) advertising; and
 - (F) technology courses with a principal focus on technology operation, software design, or software use;
 - (ii) physical well-being, including:
 - (A) personal motivation;
 - (B) stress management; and
 - (C) dress-for-success;
 - (iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:
 - (A) sales meetings;
 - (B) in-house staff meetings or training meetings; and
 - (C) member orientations for professional organizations;
 - (iv) courses in wealth creation or retirement planning for licensees; and
 - (v) courses that are specifically designed for exam preparation.
- (g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.
- (6) (a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a continuing education course certification, an applicant shall:
- (i) complete a renewal application as provided by the division; and
 - (ii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:
- (i) comply with all requirements for a timely renewal; and
 - (ii) pay a nonrefundable late fee.

- (d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206d. Certification of Prelicensing Course Instructor.

- (1) An instructor shall certify with the division prior to teaching a prelicensing course.
- (2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:
 - (a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
 - (b) evidence of having graduated from high school or achieved an equivalent education;
 - (c) evidence that the applicant understands the real estate industry through:
 - (i) a minimum of five years of full-time experience as a real estate licensee;
 - (ii) post-graduate education related to the course subject; or
 - (iii) demonstrated expertise on the subject proposed to be taught;
 - (d) evidence of ability to teach through:
 - (i) a minimum of 12 months of full-time teaching experience;
 - (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
 - (iii) attendance at a division instructor development workshop totaling at least two days in length;
 - (e) evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught;
 - (f) name and certification number of the certified prelicensing school for which the applicant will work;
 - (g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
 - (h) a signed statement agreeing not to market personal sales products;
 - (i) any other information the division requires;
 - (j) an application fee; and
 - (k) course-specific requirements as follows:
 - (i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and
 - (ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.
- (3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:
 - (a) Brokerage Management. An applicant shall:
 - (i) hold a current real estate broker license;

- (ii) possess at least two years practical experience as an active real estate principal broker; and
 - (iii) (A) have experience managing a real estate office; or
(B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.
- (b) Advanced Real Estate Law. An applicant shall:
 - (i) hold a current real estate broker license;
 - (ii) evidence current membership in the Utah State Bar; or
 - (iii) (A) have graduated from an American Bar Association accredited law school; and
(B) have at least two years real estate law experience.
- (c) Advanced Appraisal. An applicant shall hold:
 - (i) a current real estate broker license, or
 - (ii) a current appraiser license or certification from the division.
- (d) Advanced Finance. An applicant shall:
 - (i) evidence at least two years practical experience in real estate finance; and
 - (ii) (A) hold a current real estate broker license;
(B) evidence having been associated with a lending institution as a loan officer; or
(C) hold a degree in finance.
- (e) Advanced Property Management. An applicant shall hold a current real estate license and:
 - (i) evidence at least two years full-time experience as a property manager; or
 - (ii) hold a certified property manager or equivalent professional designation.
- (4) 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 the faculty member to teach the course.
- (5) (a) A preclicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a preclicensing course instructor certification, an individual shall:
 - (i) submit all forms required by the division;
 - (ii) evidence having taught, within the two-year period prior to the date of application, at least 20 hours of in-class instruction in a certified real estate course;
 - (iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and
 - (iv) pay a nonrefundable renewal fee.
- (c) To reinstate an expired preclicensing course instructor certification within 30 days following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a nonrefundable late fee.

- (d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206e. Certification of Continuing Education Course Instructor.

- (1) An instructor shall certify with the division before teaching a continuing education course.
- (2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:
 - (a) name and contact information of the applicant;
 - (b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
 - (c) evidence of having graduated from high school or achieved an equivalent education;
 - (d) evidence that the applicant understands the subject matter to be taught through:
 - (i) a minimum of two years of full-time experience as a real estate licensee;
 - (ii) college-level education related to the course subject; or
 - (iii) demonstrated expertise on the subject proposed to be taught;
 - (e) evidence of ability to teach through:
 - (i) a minimum of 12 months of full-time teaching experience;
 - (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
 - (iii) attendance at a division instructor development workshop totaling at least two days in length;
 - (f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
 - (g) a signed statement agreeing not to market personal sales products;
 - (h) any other information the division requires; and
 - (i) a nonrefundable application fee.
- (3) (a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a continuing education course instructor certification, a person shall:
 - (i) submit all forms required by the division;
 - (ii) (A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or
 - (B) submit written explanation outlining:
 - (I) the reason for not having taught a minimum of 12 continuing education credit hours; and

- (II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and
- (iii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a nonrefundable late fee.
- (d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:
 - (i) comply with all requirements for a timely renewal; and
 - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-207. Reporting a Change of Information.

- (1) Individual notification requirements.
 - (a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:
 - (i) change in licensee's name; and
 - (ii) change in licensee's business, home, e-mail, or mailing address.
 - (b) In addition to complying with this Subsection (1)(a):
 - (i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and
 - (ii) an individual licensed as a principal broker shall report to the division:
 - (A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);
 - (B) change in assignment of branch broker; and
 - (C) termination of the principal broker's affiliation with an entity.
- (2) Entity notification requirements. A registered entity shall report the following to the division:
 - (a) change in entity's name;
 - (b) change in entity's affiliation with a principal broker;
 - (c) change in corporate structure; and
 - (d) dissolution of corporation.
- (3) Notification procedures.
 - (a) Name. To report a change in name, a person shall submit to the division a paper change form and:
 - (i) if the person is an individual, attach to it official documentation such as
 - a:
 - (A) marriage certificate;
 - (B) divorce decree;
 - (C) court order; or
 - (D) driver license; and

- (ii) if the person is an entity:
 - (A) obtain prior approval from the division of the new entity name; and
 - (B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.
- (b) Address. To report a change in address, a person shall enter the change into RELMS.
- (c) Affiliation.
 - (i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and
 - (A) (I) obtain the electronic affirmation of the other party to the terminated affiliation; or
 - (II) comply with this Subsection (4); and
 - (B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.
 - (ii) To terminate an affiliation between a principal broker and an entity:
 - (A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and
 - (B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:
 - (I) cease operations;
 - (II) submit to the division a paper company/branch change form to inactivate the entity registration;
 - (III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;
 - (IV) advise the division as to the location where records will be stored;
 - (V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;
 - (VI) notify each party and cooperating broker to any existing contracts; and
 - (VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, 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.
 - (iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.
 - (iv) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:
 - (A) if the change does not involve a change in ownership, submit a letter to the division, fully explaining the change; and

- (B) if the change involves a change in ownership, obtain a new registration.
 - (v) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).
- (4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:
 - (a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and
 - (b) as applicable:
 - (i) entering the certified mail reference number into the appropriate field on the electronic change form; or
 - (ii) providing to the division a copy of the certified mail receipt.
- (5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.
- (6) Deadlines.
 - (a) A change in affiliation shall be reported to the division before the change is made.
 - (b) A change in branch manager shall be reported to the division at the time the change is made.
 - (c) Any other change shall be reported to the division within ten business days of the change taking effect.
 - (d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.
- (7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-307. Undivided Fractionalized Long-Term Estate.

- (1) A real estate licensee who markets an undivided fractionalized long-term estate shall:
 - (a) obtain from the sponsor written disclosures pursuant to this Subsection (2) regarding the sponsor and each affiliate; and
 - (b) provide the disclosures to purchasers prior to closing so as to allow adequate review by the purchaser.
- (2) Required disclosures.
 - (a) Disclosure as to the sponsor and the sponsor's affiliates, including the following:
 - (i) current certified financial statements;
 - (ii) current credit reports;
 - (iii) information concerning any bankruptcies or civil lawsuits;
 - (iv) proposed use of purchaser proceeds;
 - (v) (A) if applicable, financial statements of the master lease tenant, audited according to generally accepted accounting principles; and

- (B) if the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, audited financial statements of the owners of that entity;
- (vi) statement as to whether the sponsor is an affiliate of a master lease tenant; and
- (vii) statement as to whether any affiliate of the sponsor is:
 - (A) a third-party service provider; or
 - (B) a master lease tenant.
- (b) Disclosure as to the real property in which the undivided fractionalized long-term estate is offered, including the following:
 - (i) material information concerning any leases or subleases affecting the real property;
 - (ii) material information concerning any environmental issues affecting the real property;
 - (iii) a preliminary title report on the real property;
 - (iv) if available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;
 - (v) if applicable, rent rolls and operating history;
 - (vi) if applicable, loan documents;
 - (vii) (A) a tenants in common agreement; or
 - (B) any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;
 - (viii) third party reports acquired by the sponsor;
 - (ix) a narrative appraisal report that:
 - (A) is effective no more than six months prior to the date the offer of sale is made; and
 - (B) includes, at a minimum:
 - (I) pictures;
 - (II) type of construction;
 - (III) age of building; and
 - (IV) site information such as improvements, parking, cross easements, site and location maps;
 - (x) material information concerning the market conditions for the property class; and
 - (xi) material information concerning the demographics of the general market area.
- (c) Disclosure as to the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered, including the following:
 - (i) contact information for any existing or recommended asset managers and property managers;
 - (ii) description of any relationship between:
 - (A) the asset managers and the sponsor; and
 - (B) the property managers and the sponsor; and
 - (iii) copies of any existing:

- (A) asset management agreements; and
 - (B) property management agreements.
- (d) Disclosure as to potential tax consequences, including the following:
- (i) a statement that there might be tax consequences for a failure to close on the purchase;
 - (ii) a statement that there might be risks involved in the purchase; and
 - (iii) a statement advising purchasers to consult with tax advisors and other professionals for advice concerning these matters.
- (3) The division and commission shall consider any offering of a fractionalized undivided long-term estate in real property that complies with the Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 203.506 to be in compliance with these rules.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

- (1) uphold the following fiduciary duties in the course of representing a principal:
- (a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;
 - (b) obedience, which obligates the agent to obey all lawful instructions from the principal;
 - (c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:
 - (i) the other party; or
 - (ii) the transaction;
 - (d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:
 - (i) a defect in the property; or
 - (ii) the client's ability to perform on the contract;
 - (e) reasonable care and diligence;
 - (f) holding safe and accounting for all money or property entrusted to the agent; and
 - (g) any additional duties created by the agency agreement;
- (2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:
- (a) a seller the individual represents;
 - (b) a buyer the individual represents;
 - (c) a buyer and seller the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);
 - (d) the owner of a property for which the individual will provide property management services; and
 - (e) a tenant whom the individual represents;
- (3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:
- (a) clearly explaining in writing to both parties:

- (i) that each is entitled to be represented by a separate agent;
 - (ii) the type(s) of information that will be held confidential;
 - (iii) the type(s) of information that will be disclosed; and
 - (iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;
 - (b) obtaining a written acknowledgment from each party affirming that the party waives the right to:
 - (i) undivided loyalty;
 - (ii) absolute confidentiality; and
 - (iii) full disclosure from the licensee; and
 - (c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;
- (4) when acting under a limited agency agreement:
- (a) act as a neutral third party; and
 - (b) uphold the following fiduciary duties to both parties:
 - (i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;
 - (ii) reasonable care and diligence;
 - (iii) holding safe all money or property entrusted to the limited agent; and
 - (iv) any additional duties created by the agency agreement;
- (5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:
- (a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;
 - (b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;
 - (c) the licensee's agency relationship(s);
 - (d)
 - (i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and
 - (ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;
- (6) when completing a listing agreement, make reasonable efforts to verify the accuracy and content of the listing;
- (7) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;
- (8) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:
- (a) in the currently approved Real Estate Purchase Contract; or
 - (b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;
- (9) when executing a lease or rental agreement, confirm the prior agency disclosure by:
- (a) incorporating it into the agreement; or

- (b) attaching it as a separate document;
- (10) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:
 - (a) obtain authorization from the licensee's principal broker to offer the inducement;
 - (b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and
 - (c) provide notice of the inducement, using any method or form, to:
 - (i) the principal broker of the seller's agent, if the seller paying a commission is represented; or
 - (ii) the seller, if the seller paying a commission is not represented;
- (11) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:
 - (a) notify the listing brokerage that sub-agency is requested; and
 - (b) enter into a written agreement with the listing brokerage with which the seller has contracted:
 - (i) consenting to the sub-agency; and
 - (ii) defining the scope of the agency;
 - (c) obtain from the listing brokerage all available information about the property; and
 - (d) uphold the same fiduciary duties outlined in this Subsection (1);
- (12) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;
- (13) (a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:
 - (i) the principal broker's individual name; or
 - (ii) the principal broker's brokerage name; and
 (b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;
- (14) timely inform the licensee's principal broker or branch broker of real estate transactions in which:
 - (a) the licensee is involved as agent or principal;
 - (b) the licensee has received funds on behalf of the principal broker; or
 - (c) an offer has been written;
- (15) (a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and
- (b) ensure that any such compensation is paid to the licensee's principal broker;
- (16) in negotiating and closing transactions, use:
 - (a) (i) the standard forms approved by the commission and identified in Section R162-2f-401f;
 - (ii) standard supplementary clauses approved by the commission; and
 - (iii) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;
 - (b) forms prepared by an attorney for a party to the transaction, if:

- (i) a party to the transaction requests the use of the attorney-drafted forms; and
 - (ii) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or
- (c) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:
 - (i) the principal; or
 - (ii) an entity in the business of selling blank legal forms;
- (17) use an approved addendum form to make a counteroffer or any other modification to a contract;
- (18) in order to sign or initial a document on behalf of a principal:
 - (a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;
 - (b) retain in the file for the transaction a copy of said power of attorney;
 - (c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;
 - (d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and
 - (e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"
- (19) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;
- (20) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;
- (21) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:
 - (a) the conditions and other terms under which the property is guaranteed to be sold or purchased;
 - (b) the charges or other costs for the service or plan;
 - (c) the price for which the property will be sold or purchased; and
 - (d) the approximate net proceeds the seller may reasonably expect to receive;
- (22) immediately deliver money received in a real estate transaction to the principal broker for deposit; and
- (23) as contemplated by Subsection 61-2f-401(18), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

- (1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:
 - (a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;
 - (b) could jeopardize the public health, safety, or welfare; or
 - (c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

- (2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;
- (3) make a misrepresentation in an application for license renewal with the division;
- (4) (a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or
(b) knowingly participate in a transaction in which such a false device is used;
- (5) participate in a transaction in which a buyer enters into an agreement that:
 - (a) is not disclosed to the lender; and
 - (b) if disclosed, might have a material effect on the terms or the granting of the loan;
- (6) use or propose the use of a double contract;
- (7) place a sign on real property without the written consent of the property owner;
- (8) take a net listing;
- (9) sell listed properties other than through the listing broker;
- (10) subject a principal to paying a double commission without the principal's informed consent;
- (11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;
- (12) 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 that a licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction;
- (13) accept a referral fee from:
 - (a) a lender; or
 - (b) a mortgage broker;
- (14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:
 - (a) mortgage loan originator, associate lending manager, or principal lending manager;
 - (b) appraiser or appraiser trainee;
 - (c) escrow agent; or
 - (d) provider of title services;
- (15) 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;
- (16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:
 - (a) the boilerplate provisions of the Real Estate Purchase Contract; or
 - (b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;
- (17) advertise or offer to sell or lease property without the written consent of:
 - (a) the owner of the property; and

- (b) if the property is currently listed, the listing broker;
- (18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;
- (19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(22);
- (20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information; or
- (21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued.

R162-2f-401c. Additional Provisions Applicable to Principal Brokers.

- (1) A principal broker shall:
 - (a) (i) maintain all records pertaining to a real estate transaction for at least three calendar years following the year in which:
 - (A) an offer is rejected; or
 - (B) the transaction either closes or fails; and
 - (ii) make such records available for inspection and copying by the division;
 - (b) unless otherwise authorized by the division in writing, maintain business records at:
 - (i) the principal business location designated by the principal broker on division records; or
 - (ii) where applicable, a branch office as designated by the principal broker on division records;
 - (c) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained;
 - (d) upon filing for brokerage bankruptcy, notify the division in writing of:
 - (i) the filing; and
 - (ii) the current location of brokerage records;
 - (e) provide to the person whom the principal broker represents in a transaction:
 - (i) a detailed statement showing the current status of a transaction upon the earlier of:
 - (A) the expiration of 30 days after an offer has been made and accepted; or
 - (B) a buyer or seller making a demand for such statement; and
 - (ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;
 - (f) (i) regardless of who closes a transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:
 - (A) the principal broker;
 - (B) an associate broker or branch broker affiliated with the principal broker; or
 - (C) the sales agent who is:
 - (I) affiliated with the principal broker; and

- (II) representing the principal in the transaction; and
 - (ii) ensure the principals in each closed transaction receive copies of all documents executed in the transaction closing;
- (g) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:
 - (i) an identification of the property involved in the real estate transaction;
 - (ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;
 - (iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;
 - (iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and
 - (v) additional instructions at the discretion of the principal broker;
- (h) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;
- (i) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:
 - (i) the principal broker for an entity; or
 - (ii) a branch broker;
- (j) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;
- (k) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;
- (l)
 - (i) except as provided in this Subsection (1)(l)(ii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:
 - (A) maintained by the principal broker pursuant to Section R162-2f-403; or
 - (B) if the parties to the transaction agree in writing, maintained by:
 - (I) a title company pursuant to Section 31A-23a-406; or
 - (II) another authorized escrow entity;
 - (ii) a principal broker is not required to comply with this Subsection (1)(l)(i) if:
 - (A) the Real Estate Purchase Contract or other agreement states that the money is to be:
 - (I) held for a specific length of time; or
 - (II) deposited upon acceptance by the seller; or
 - (B) the Real Estate Purchase Contract or other agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:
 - (I) names the seller as payee; and
 - (II) is retained in the principal broker's file until closing;
- (m)
 - (i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate transactions; and

- (ii) be personally responsible at all times for deposits held in the principal broker's trust account;
- (n) (i) assign a consecutive, sequential number to each offer, such that all pertinent documents may be readily identified as relating to the offer;
- (ii) maintain a separate transaction file for each offer, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;
- (iii) maintain a record of each rejected offer that does not involve funds deposited to trust:
 - (A) in separate files; or
 - (B) in a single file holding all such offers; and
- (o) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):
 - (i) actively supervise any such associate broker or branch broker; and
 - (ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.
- (2) A principal broker shall not be deemed in violation of this Subsection (1)(i) where:
 - (a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;
 - (b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;
 - (c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;
 - (d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;
 - (e) the broker did not participate in the violation;
 - (f) the broker did not ratify the violation; and
 - (g) the broker did not attempt to avoid learning of the violation.

R162-2f-401d. School Conduct.

- (1) Affirmative duties. A school's owner(s) and director(s) shall:
 - (a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;
 - (b) (i) provide instructors of prelicensing courses with the state-approved course outline; and
 - (ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;
 - (c) ensure that all instructors comply with Section R162-2f-401e.
 - (d) prior to accepting payment from a prospective student for a prelicensing education course:
 - (i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d); and
 - (ii) obtain the student's signature on the criminal history disclosure;

- (e) (i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and
 - (e) (ii) make the signed criminal history disclosures available for inspection by the division upon request;
 - (f) maintain for a minimum of three years after enrollment:
 - (i) the registration record of each student;
 - (ii) the attendance record of each student; and
 - (iii) any other prescribed information regarding the offering, including exam results, if any;
 - (g) ensure that course topics are taught only by:
 - (i) certified instructors; or
 - (ii) guest lecturers;
 - (h) (i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and
 - (h) (ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;
 - (i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;
 - (j) at the conclusion of a course:
 - (i) provide to each student who completes the course a course evaluation in the form required by the division; and
 - (ii) submit the completed course evaluations to the division within ten business days;
 - (k) within ten days of teaching a course, upload course completion information for any student who:
 - (i) successfully completes the course; and
 - (ii) provides an accurate name or license number within seven business days of attending the course;
 - (l) substantiate, upon request by the division, any claims made in advertising; and
 - (m) include in all advertising materials the continuing education course certification number issued by the division.
- (2) Prohibited conduct. A school may not:
- (a) award continuing education credit for a course that has not been certified by the division prior to its being taught;
 - (b) award continuing education credit to any student who fails to:
 - (i) attend a minimum of 90% of the required class time; or
 - (ii) pass a course final examination;
 - (c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;
 - (d) allow a student to challenge by examination any course or part of a course in lieu of attendance;
 - (e) allow a course approved for traditional education to be:
 - (i) taught in a private residence; or
 - (ii) completed through home study;
 - (f) make a misrepresentation in advertising about any course of instruction;

- (g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;
- (h) make disparaging remarks about a competitor's services or methods of operation;
- (i) 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;
- (j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;
- (k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;
- (l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;
- (m) obligate or require students to attend any event in which a brokerage solicits for agents;
- (n) award more than eight credit hours per day per student;
- (o) award credit for an online course to a student who fails to complete the course within one year of the registration date;
- (p) advertise or market a continuing education course that has not been:
 - (i) approved by the division; and
 - (ii) issued a current continuing education course certification number; or
- (q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

R162-2f-401e. Instructor Conduct.

- (1) Affirmative duties. An instructor shall:
 - (a) adhere to the approved outline for any course taught;
 - (b) comply with a division request for information within ten business days of the date of the request; and
 - (c) maintain a professional demeanor in all interactions with students.
- (2) Prohibited conduct. An instructor may not:
 - (a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or
 - (b) continue to teach any course after the course has expired and without renewing the course certification.

R162-2f-401f. Approved Forms.

The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

- (1) August 27, 2008, Real Estate Purchase Contract;
- (2) January 1, 1999 Real Estate Purchase Contract for Residential Construction;
- (3) January 1, 1987, Uniform Real Estate Contract;
- (4) October 1, 1983, All Inclusive Trust Deed;
- (5) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;
- (6) August 5, 2003, Addendum to Real Estate Purchase Contract;

- (7) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;
- (8) January 1, 1999, Buyer Financial Information Sheet;
- (9) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;
- (10) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;
- (11) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract;
and
- (12) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint
and/or Lead-based Paint Hazards.

R162-2f-401g. Use of Personal Assistants.

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

- (1) obtain the permission of the licensee's principal broker before employing the individual;
- (2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:
 - (a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;
 - (b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;
 - (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 or completion of forms or documents;
 - (d) placing brokerage signs on listed properties;
 - (e) having keys made for listed properties; and
 - (f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;
- (3) compensate a personal assistant at a predetermined rate that is not:
 - (a) contingent upon the occurrence of real estate transactions; or
 - (b) determined through commission sharing or fee splitting; and
- (4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

R162-2f-401h. Requirements and Restrictions in Advertising.

- (1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:
 - (a) a licensee advertises unlisted property in which the licensee has an ownership interest; and
 - (b) the advertisement identifies the licensee as "owner-agent" or "owner-broker."
- (2) An advertisement that includes the name of an individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.

- (3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.
- (4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.
- (5) An advertising team, group, or other marketing entity that is not registered as a brokerage:
 - (a) shall, in all types of advertising, clearly:
 - (i) disclose that the team, group, or other marketing entity is not itself a brokerage; and
 - (ii) state the name of the registered brokerage with which the property being advertised is listed;
 - (b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and
 - (c) may not advertise as an "owner-agent" or "owner-broker."
- (6) (a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:
 - (i) a statement that costs and conditions may apply; and
 - (ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(21).
- (b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-401i. Standards for Real Estate Auctions.

A principal broker who contracts or in any manner affiliates with an auctioneer or auction company to sell at auction real property in this state shall:

- (1) ensure 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;
- (2) ensure that advertising and promotional materials associated with an auction name the principal broker;
- (3) attend and supervise the auction;
- (4) ensure that any purchase agreement used at the auction:
 - (a) meets the requirements of Subsection R162-2f-401a(16); and
 - (b) is completed by an individual holding an active Utah real estate license;
- (5) ensure that any money deposited at the auction is placed in trust pursuant to Subsection R162-2f-401c(1)(l); and
- (6) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

R162-2f-401j. Standards for Property Management.

- (1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage unless the principal broker obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.
- (2)
 - (a) The principal broker shall diligently supervise the activities of each sales agent or associate broker who is affiliated with the principal broker and assigned to perform property management tasks.
 - (b) If property management activities are conducted at a branch office, the branch broker shall actively supervise the licensees and unlicensed assistants working from that branch.
- (3) The principal broker shall sign and submit forms as required by the division to affiliate the property management company with each associate broker, branch broker, and sales agent who will conduct the business of property management.
- (4) No real estate sales activity may be conducted by a property management company.
- (5) Individuals who are principals or owners of an entity registered as a property management company may not engage in activities that require licensure as a sales agent, associate broker, or principal broker without first obtaining a license and establishing an affiliation pursuant to Sections R162-2f-202a through 202c.
- (6) An individual employed by a property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:
 - (a) providing a prospective tenant with access to a vacant unit;
 - (b) providing secretarial, bookkeeping, maintenance, or rent collection services;
 - (c) quoting predetermined rent and lease terms; and
 - (d) completing pre-printed lease or rental agreements.

R162-2f-402. Investigations.

The investigative and enforcement activities of the division shall include the following:

- (1) verifying information provided on new license applications and applications for license renewal;
- (2) evaluation and investigation of complaints;
- (3) auditing licensees' business records, including trust account records;
- (4) meeting with complainants, respondents, witnesses and attorneys;
- (5) making recommendations for dismissal or prosecution;
- (6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;
- (7) working with the assistant attorney general and representatives of other state and federal agencies; and
- (8) entering into proposed stipulations for presentation to the commission and the director.

R162-2f-403. Trust Accounts.

- (1) A principal broker shall:
 - (a) maintain a trust account in a bank or credit union located within the state of Utah;
 - (b) notify the division in writing of:

- (i) the account number; and
 - (ii) the address of the bank or credit union where the account is located; and
- (c) use the account for the purpose of securing clients funds:
 - (i) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;
 - (ii) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and
 - (iii) collected in the performance of property management duties as specified in this Subsection (4)(b).
- (2) A principal broker who deposits in any trust account more than \$500 of the principal broker's own funds violates Subsection 61-2f-401(4)(b).
- (3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.
- (4)
 - (a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish a property management trust account separate from the real estate trust account.
 - (b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.
- (5) A trust account maintained by a principal broker shall be non-interest-bearing, unless:
 - (a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;
 - (b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;
 - (c) the person designated under this Subsection (5)(b):
 - (i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and
 - (ii) operates exclusively to provide grants to affordable housing programs in Utah; and
 - (d) the affordable housing program that is the recipient of the grant under this Subsection (5)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.
- (6) Disbursement of funds held in trust.
 - (a) A principal broker may disburse funds only in accordance with:
 - (i) specific language in the Real Estate Purchase Contract authorizing disbursement;
 - (ii) other proper written authorization of the parties having an interest in the funds; or
 - (iii) court order.
 - (b) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

- (c) A principal broker may not withdraw any portion of the principal broker's sales commission:
 - (i) without written authorization from the seller and buyer; or
 - (ii) (A) until after the settlement statements have been delivered to the buyer and seller; and
 - (B) the buyer or seller has been paid for the amount due as determined by the settlement statement.
- (d) A principal broker may not pay a commission from the real estate trust account:
 - (i) until after the transaction has closed or otherwise terminated; and
 - (ii) without making a record of each disbursement.
- (e) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:
 - (i) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or
 - (ii) the parties execute a separate signed agreement containing instructions and authorization for disbursement.
- (f) If both parties to a contract make a written claim to the earnest money or other trust funds and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:
 - (i) interplead the funds into court and thereafter disburse:
 - (A) upon written authorization of the party who will not receive the funds; or
 - (B) pursuant to the order of a court of competent jurisdiction; or
 - (ii) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:
 - (A) no party has filed a civil suit arising out of the transaction; and
 - (B) the parties have contractually agreed to submit disputes arising out of their contract to mediation.
- (g) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

R162-2f-407. Administrative Proceedings.

- (1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.
- (2) Informal adjudicative proceedings.
 - (a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.
 - (b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.
- (3) Hearings required. A hearing before the commission shall be held in a proceeding:

- (a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and
 - (b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.
- (4) Procedures for hearings in informal adjudicative proceedings.
- (a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.
 - (b) All informal adjudicative proceedings shall adhere to procedures as outlined in:
 - (i) Utah Administrative Procedures Act Title 63G, Chapter 4;
 - (ii) Utah Administrative Code Rule R151-46b; and
 - (iii) the rules promulgated by the division.
 - (c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.
 - (d) In any proceeding under this Subsection 407, the commission and the division may at their discretion 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 shall be in writing.
 - (e) Upon the scheduling of a hearing by the division and at least ten business days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:
 - (i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and
 - (ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.
 - (f) Formal discovery is prohibited.
 - (g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:
 - (i) on its own behalf; or
 - (ii) on behalf of a party where the party:
 - (A) makes a written request;
 - (B) assumes responsibility for effecting service of the subpoena; and
 - (C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.
 - (h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.
 - (i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.
 - (j) The division may decline to provide a party with information that it has previously provided to that party.
 - (k) Intervention is prohibited.

- (l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:
 - (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or
 - (ii) Title 52, Chapter 4, the Open and Public Meetings Act.
 - (m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-46b-6, an attorney may represent a party.
- (5) Additional procedures for disciplinary proceedings.
 - (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:
 - (i) a notice of agency action;
 - (ii) a petition setting forth the allegations made by the division;
 - (iii) a witness list, if applicable; and
 - (iv) an exhibit list, if applicable.
 - (b) Answer.
 - (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.
 - (ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.
 - (iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.
 - (c) Witness and exhibit lists.
 - (i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.
 - (ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.
 - (iii) Any witness list shall contain:
 - (A) the name, address, and telephone number of each witness; and
 - (B) a summary of the testimony expected from the witness.
 - (iv) Any exhibit list:
 - (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
 - (B) shall be accompanied by copies of the exhibits.
 - (d) Pre-hearing motions.
 - (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
 - (ii) The division director shall receive and rule upon any pre-hearing motions.

TABLE 1
APPENDIX 1 - REAL ESTATE TRANSACTIONS EXPERIENCE TABLE

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 2

APPENDIX 2 - PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL

- | | |
|-----------------------|---------------|
| (a) Each unit managed | 0.25 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 |
|--|------------|

TABLE 3

APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

- | | |
|---|-------------|
| 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 |

KEY: real estate business, licensing, enforcement

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 61-2f-103(1), 61-2f-105, 61-2f-307