

R162. Commerce, Real Estate.

R162-2f. Real Estate Licensing and Practices Rules.

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 a commercial message 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;
 - (k) other electronic communication; or
 - (l) 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, including:
 - (i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and
 - (ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; 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) "Closing gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in appreciation for having used the services of a real estate brokerage.
- (11) "Commission" means the Utah Real Estate Commission.
- (12) "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).
- (13) "Correspondence course" means a self-paced real estate course that:
 - (a) is not distance or traditional education; and
 - (b) fails to meet real estate educational course certification standards because:
 - (i) it is primarily student initiated; and
 - (ii) the interaction between the instructor and student lacks substance and/or is irregular.

- (14) "Day" means calendar day unless specified as "business day."
- (15)(a) "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 the following:
- (i) computer conferencing;
 - (ii) satellite teleconferencing;
 - (iii) interactive audio;
 - (iv) interactive computer software;
 - (v) Internet-based instruction; and
 - (vi) other interactive online courses.
- (b) "Distance education" does not include home study and correspondence courses.
- (16) "Division" means the Utah Division of Real Estate.
- (17) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.
- (18) "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.
- (19) "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.
- (20) "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.
- (21) "Inducement gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in a real estate transaction as an incentive to use the services of a real estate brokerage.
- (22) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.
- (23) "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.
- (24) "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.
- (25)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).
- (b) "Non-certified education" does not include:
 - (i) home study courses; or
 - (ii) correspondence courses.
- (26) "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.
- (27) "Principal brokerage" means the main real estate or property management office of a principal broker.
- (28) "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, manager, or employee of the entity that is the buyer, seller, lessor, or lessee.
- (29) "Provider" means an individual or business that is approved by the division to offer continuing education.
- (30) "Property management" is defined in Subsection 61-2f-102(19).
- (31) "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.
- (32) "Reinstatement" is defined in Subsection 61-2f-102(22).
- (33) "Reissuance" is defined in Subsection 61-2f-102(23).
- (34) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.
- (35) "Renewal" is defined in Subsection 61-2f-102(24).
- (36) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.
- (37) "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 division as a school; or
 - (d) any proprietary real estate school.
- (38) "Sponsor" means:
 - (a) a person who is the original seller of an undivided fractionalized long-term estate.
 - (b) sponsor includes, if the seller is an entity, any individual who exercises managerial responsibility in the sponsoring entity.
- (39) "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.
- (40) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.
- (41) "Undivided fractionalized long-term estate" is defined in Subsection 57-29-102(8).

R162-2f-105. Fees.

Any fee collected by the division is nonrefundable.

R162-2f-200. Owner.

- (1) For purposes of Section 61-2f-202(1):
 - (a) "owner" means a person who has:
 - (i) a sole ownership interest in real estate, or
 - (ii) an ownership interest in real estate as a joint tenant or a tenant in common;
 - (b) "owner or lessor" does not include:
 - (i) a person who holds an option to purchase real property;
 - (ii) a mortgagee;
 - (iii) a beneficiary under a deed of trust;
 - (iv) a trustee under a deed of trust; or
 - (v) a person who owns or holds a claim that encumbers any real property or an improvement to the real property.
- (2) For purposes of Subsection 61-2f-202(1)(a)(i):
 - (a) any person performing an act described in Subsection 61-2f-102(20) on behalf of an entity must be:
 - (i) if the entity is a corporation, an officer or director of the corporation;
 - (ii) if the entity is a limited liability company,
 - (A) a member of a member-managed limited liability company, or
 - (B) a manager of a manager-managed limited liability company;
 - (iii) if the entity is a partnership, a partner of the partnership;
 - (iv) if the entity is a limited partnership, a general partner of the limited partnership;
 - (v) if the entity is a trust, a trustee of the trust;
 - (vi) if the entity is an estate of a deceased individual, a court-appointed personal representative of the estate; or

- (vii) if the entity is the estate of an individual subject to a conservatorship, a court-appointed conservator of the estate.
- (b) A person who is an entity or organization not described in Subsections (1)(c)(i) through (vii) above is not exempt from licensure under Section 61-2f-202(1)(a)(i).

R162-2f-201. Qualification for Licensure.

(1) Character. Pursuant to Subsection 61-2f-203(1)(c), 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; or
 - (B) 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 other than those specified in Subsection (1)(a);
 - (ii) plea agreements;
 - (iii) 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;
 - (iv) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
 - (v) court findings of fraudulent or deceitful activity;
 - (vi) evidence of non-compliance with court orders or conditions of sentencing; and
 - (vii) 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.
 - (c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.
 - (ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include the following:
 - (A) assault, including domestic violence;
 - (B) rape;
 - (C) sex abuse of a child;
 - (D) sodomy on a child;
 - (E) battery;
 - (F) interruption of a communication device;
 - (G) vandalism;
 - (H) robbery;
 - (I) criminal trespass;
 - (J) breaking and entering;
 - (K) kidnapping;
 - (L) sexual solicitation or enticement;
 - (M) manslaughter; and
 - (N) homicide.
 - (iii) Information and documents submitted in compliance with this Subsection shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.
- (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 preclicensing 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 preclicensing 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 preclicensing 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 preclicensing 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 preclicensing 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 preclicensing 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 preclicensing 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. Broker Licensing Fees and Procedures.

- (1) To obtain a Utah license to practice as a 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 Subsection (3)(a), take and pass both the state and national components of the licensing examination;
 - (f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application either:
 - (A) three years full-time, licensed, active real estate experience; or
 - (B) two years full-time, licensed, active, real estate experience and one year full-time professional real estate experience from the optional experience table in Appendix 3; and
 - (ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 documented experience points complying with R162-2f-401a, as follows:
 - (A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2, of which a maximum of 25 points may have been accumulated from the "All other property management" subsections of Appendix 2; and
 - (B) 0 to 15 points pursuant to the experience point table found in Appendix 3;
 - (iii) a minimum of one-half of the experience points from Tables 1 and 2 must derive from transactions of properties located in the state of Utah;
 - (iv) evidence of qualifying experience which the individual shall submit to the division by:
 - (A) selecting from the individual's total qualifying experience documented experience points for which the experience complies with the requirements in section R162-2f-401a; and
 - (B) submitting for review and approval by the division documentation of at least 60 documented experience points and no more than 80 documented experience points of the individual's qualifying experience; and
 - (v) if an individual submits evidence of experience points for transactions involving a team or group, experience points are limited to those transactions for which the individual is named in any written agency agreements and purchase and lease contracts and the applicable experience points will be divided proportionally among the licensees identified in the agency agreements and lease contracts;
 - (g) pursuant to 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;
 - (k) if applying for licensure as a principal broker, establish real estate and property management trust accounts, as applicable pursuant to Sections R162-2f-403a, R162-2f-403b, and R162-2f-403c that:
 - (i) for a real estate trust account contains either the term "real estate trust account" or "real estate escrow account" in the account name;
 - (ii) for a property management trust account contains either the term "property management trust account" or "property management escrow account" in the account name; and
 - (iii) are separate and distinct from any operating accounts of the registered entity for which the broker applicant will serve as principal broker; and
 - (l) if applying for licensure as a principal broker, the applicant shall identify the locations where brokerage records will be kept.
- (2)(a) If an individual applies under this section R162-2f-202b within two years of allowing a broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.
- (b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under 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.
- (4) Restriction. A broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.
- (5) Dual broker licenses.
 - (a)(i) A person who holds or obtains a dual broker license under this section may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.
 - (ii) A dual broker may not conduct real estate sales activities from the separate property management company.
 - (iii) A principal broker may conduct property management activities from the person's real estate brokerage:
 - (A) without holding a dual broker license; and
 - (B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c.
 - (b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:
 - (i) at the broker's request, convert the dual broker license to a principal broker license; and
 - (ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or
 - (B) close the separate property management company.
 - (c) As of May 8, 2013:
 - (i) the Division shall:
 - (A) cease issuing property management principal broker (PMPB) licenses;
 - (B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;
 - (C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and
 - (D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and
 - (ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to Subsection (5)(c)(i)(C).

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-202d. Property Management Sales Agent Licensing Fees and Procedures.

- (1) A sales agent affiliated with a dual broker through a property management company may act as a property management sales agent if:
 - (a) the dual broker designates the sales agent as a property management sales agent, and
 - (b) the sales agent pays to the division the property management sales agent designation fee.
- (2) A property management sales agent may simultaneously provide both property management services and real estate sales services under the supervision of the dual broker if the property management sales agent:
 - (a) provides property management services only through the property management company overseen by the dual broker, and
 - (b) provides real estate sales services only through the real estate brokerage overseen by the dual broker.
- (3) Before a property management sales agent may affiliate with another principal broker who is not a dual broker or with a dual broker who does not approve of the property management sales agent designation, the property management sales agent shall pay the additional fee to remove the property management sales agent designation.

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 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 of which three hours shall include the Mandatory 3-Hour CE course; 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 or Reinstatement.

- (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) To renew on time without incurring a late fee, an applicant for renewal shall, by the 15th day of the month of expiration, have completed all continuing education credits required under subsection (2)(b) to ensure continuing education providers have time to bank continuing education hours prior to license expiration.
 - (c) 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, in the licensee's individual password protected RELMS account, by the license expiration date.
 - (d) An individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal application:
 - (i) by the license expiration date, if that date falls on a day when the division is open for business; or
 - (ii) 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 or reinstatement.
 - (a) Character and competency.
 - (i) An individual applying for a renewed license or for reinstatement of a license shall evidence that the individual maintains character and competency as required for initial licensure.
 - (ii) An individual applying for a renewed or reinstated 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 actively licensed individual shall complete:
 - (A) the 12-hour new sales agent course certified by the division;
 - (B) the Mandatory 3-Hour CE course; and
 - (C) an additional three non-duplicative hours of continuing education:
 - (I) certified by the division as either core or elective; or
 - (II) acceptable to the division pursuant to Subsection (2)(b)(ii)(B).
 - (ii) To renew at the end of a renewal cycle subsequent to the first renewal, an actively licensed 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, three hours of which are for completion of the Mandatory 3-Hour CE Course, a required continuing education course approved by the division; and
- (III) taken during the previous license period; or
- (B) apply to the division by the 15th day of the month of expiration 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) If when renewing at the end of a renewal cycle subsequent to the first renewal, an actively licensed individual did not previously complete the 12-hour new sales agent course when qualifying for the individual's current license, the individual shall complete the 12-hour new sales agent course certified by the Division plus an additional six hours of non-duplicative core topic or elective continuing education hours.
 - (iv) The Division has certified the mandatory 3-Hour course and the 12-hour new sales agent course as core hours for continuing education purposes.
 - (v)(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)(j).
 - (B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(j), 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 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) complete the online renewal of the license in the applicant's password protected RELMS account; 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) through 61-2f-204(2) (d):
 - (i) submit any forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2), including the Mandatory 3-Hour CE course; and
 - (ii) pay a nonrefundable reinstatement fee.
 - (4) Transition to online renewal. 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 may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.
- (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 each sales agent, associate broker, branch broker, and unlicensed staff member;
 - (c) if registering a branch office, identify the branch broker who will actively supervise each licensee 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 and property management trust account(s) in which funds received at the registered location will be deposited;
 - (e) inform the division of:
 - (i) the location and account number of any operating account(s) used by the registered entity; and
 - (ii) the location where brokerage records will be kept; and

- (f) pay a nonrefundable application fee.
- (4) Restrictions.
 - (a)(i) The division shall not register an entity proposing to use a business name that:
 - (A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;
 - (B) closely resembles the name of another registered entity; or
 - (C) the division determines might otherwise be confusing or misleading to the public.
 - (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.
 - (d) Each trust account and operating account used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.
- (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) first, obtain division approval of the school name; and
 - (b) second, 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, email address, and address of the physical facility;
 - (ii) name, phone number, email address, and address of each school director;
 - (iii) name, phone number, email address, 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 to be offered, including the following:
 - (i) a statement of whether each course is a prelicensing or continuing education course; and
 - (ii) as to a continuing education course, whether it is designed to qualify as fulfilling all or part of the core curriculum requirement for new agents;
 - (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 and as specified in Subsection (3)(c);
 - (l) criminal history disclosure statement as provided to students and as specified in Subsection (3)(d);
 - (m) disclosure, as specified in Subsection (3)(e), of any possibility of obtaining an education waiver;
 - (n) course completion policy, as provided to students, describing the length of time allowed for completion and detailed requirements; and
 - (o) 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) The education waiver disclosure shall adhere to the following requirements:

(i) disclose to students the requirements for obtaining an education waiver while they are still eligible for a full refund;

(ii) be typed in all capital letters at least 1/4 inch high;

(iii) inform the students that the division grants education waivers for qualified individuals; and

(iv) state the following language: "A student accepted or enrolled for education hours cannot later reduce those hours by applying for an education waiver. An education waiver must be obtained before a student enrolls and is accepted by a school for education hours."

(f) 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's education staff, 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, including a statement of whether the course is designed for:

(A) sales agents; or

(B) brokers;

(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;
 - (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; and
 - (i) a description of the complaint process to resolve student grievances.
- (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)(d)(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;
 - (f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline; and
 - (g) reflect the current statutes and rules of the division.
- (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 frequent and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;
 - (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) fair housing;
 - (xi) division administrative rules;
 - (xii) broker trust accounts; and
 - (xiii) water law, rights and transfer.
 - (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) affirmative marketing;
- (xxxii) commercial real estate;
- (xxxiii) tenancy in common;
- (xxxiv) professional development;
- (xxxv) business success;
- (xxxvi) customer relation skills;
- (xxxvii) 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;
- (xxxviii) personal and property protection for licensees and their clients;
- (xxxix) 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;
- (xl) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and
- (xli) technology courses that utilize the majority of the time instructing students how the technology:
 - (A) directly benefits the consumer; or
 - (B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.
- (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:

- (i) designed to test the knowledge of the subject matter proposed to be taught;
- (ii) with a score of 80% or more correct responses, and;
- (iii) within the six-month period preceding the date of application;

(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, 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 preclicensing 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 as an instructor for any continuing education course other than the Mandatory 3-Hour CE course, 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; or
 - (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience;
 - (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) To certify as an instructor of the Mandatory 3-Hour CE course, an applicant shall:
 - (a) attend the instructor development workshop at least once every two years or, if the division approves an alternative training session, attend the alternative training session at the time and location designated by the division; and
 - (b) comply with the requirements described in Subsection (2).
- (4)(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 (4) 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 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 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;
 - (d) dissolution of corporation; and
 - (e) change of location where brokerage records are kept.
- (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 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 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 each party to every 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.
 - (d) Corporate structure.
 - (i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:
 - (A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and
 - (B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.
 - (ii) To report the dissolution of an entity registered with the division, a person shall comply with Subsection (3)(c)(ii)(B).
 - (e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.
 - (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, 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; and
 - (b) sending an email to notify the individual.
- The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.
- (5) The termination of affiliation by sending an email is effective 10 days after the date that the email was sent.
 - (6) Fees. The division may require a notification submitted pursuant to this section to be accompanied by a nonrefundable change fee.
 - (7) 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.
 - (8) 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.

A person who sells or offers to sell an undivided fractionalized long-term estate shall disclose to each prospective purchaser certain information related to the real property in which the undivided fractionalized long-term estate is offered, as described in this rule. A real estate licensee who markets an undivided fractionalized long-term estate shall obtain from the sponsor or seller and provide to each prospective purchaser the required information related to the real property in which the undivided fractionalized long-term estate is offered. The information required to be disclosed hereunder shall be in written or documented form, which shall be provided to the purchaser prior to purchasing, and shall include the following:

- (1) for all undivided fractionalized long-term estates:
 - (a) a brief account describing the professional qualifications, background, and experience of the sponsor;
 - (b) any material information that relates to a current lease or sublease that affects the real property in which the undivided fractionalized long-term estate is offered;
 - (c) the tenant in common agreement or other agreement that forms the substance of the undivided fractionalized long-term estate and includes a definition of the undivided fractionalized interest;
 - (d) description of any improvements to the real property in which the undivided fractionalized long-term estate is offered;
 - (e) any defects in the property known by the sponsor that may materially affect the value of the property;
 - (f) material information known by the sponsor concerning any environmental issues affecting the real property; and,
 - (g) a preliminary title report on the real property;
- (2) in addition to the disclosures required by subsection (1), if the undivided fractionalized long-term estate includes:
 - (a) management of the real property by the sponsor or an affiliate of the sponsor in accordance with UCA Section 61-1-13(1)(ee)(ii)(C)(II) and (III), the information required to be disclosed shall include:
 - (i) the sponsor's continuing interest, if any, in the real property;
 - (ii) any bankruptcies or civil lawsuits involving the sponsor and each affiliate of the sponsor;
 - (iii) whether any affiliate of the sponsor is or is expected to become a third-party service provider to the real property;
 - (iv) any relationship between the property managers and the sponsor; and,
 - (v) any property management agreements that would continue after the sale;
 - (b) multiple tenants, the information required to be disclosed shall include:

- (i) any rent rolls and payment history for the property which the sponsor has in their possession, custody, or control; and
- (ii) any tenant financial records the sponsor has in their possession, custody, or control;
- (c) debt on the real property, the information required to be disclosed shall include:
 - (i) each of the loan documents; and
 - (ii) a current loan statement;
- (d) a master lease agreement, the information required to be disclosed shall include:
 - (i) the master lease agreement;
 - (ii) disclosure of the sponsor's relationship with the master tenant, if any;
 - (iii) if the master lease tenant is an affiliate of the sponsor, or the sponsor participated in establishing the master lease:
 - (A) audited financial statements of the master lease tenant; and
 - (B) all bankruptcies or civil lawsuits involving the sponsor, an affiliate of the sponsor, or the master lease tenant.

R162-2f-401a. Affirmative Duties Required of 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 any other interest, including the agent's own;
 - (b) obedience, which obligates the agent to obey any 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 any 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) seller(s) the individual represents;
 - (b) buyer(s) the individual represents;
 - (c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to 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 prior 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 any lawful instructions from the parties, consistent with the agent's duty of neutrality;
 - (ii) reasonable care and diligence;
 - (iii) holding safe any money or property entrusted to the limited agent; and
 - (iv) any additional duties created by the agency agreement;
- (5) when making an offer or solicitation to buy, sell, lease or rent real property as a principal, either directly or indirectly, or as an agent for a client, a licensee shall disclose in the initial contact with the other party the fact that the licensee holds a license with the division, whether the license status is active or inactive;
- (6) prior to the execution of a binding purchase or lease 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); and
- (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;
- (7) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;
- (8) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:
 - (a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and
 - (b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;
- (9) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;
- (10) 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;
- (11) 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;
- (12) 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 any available information about the property; and
 - (d) uphold the same fiduciary duties outlined in Subsection (1);
- (13) provide copies of a lease or purchase agreement, properly signed by each party, to the party for whom the licensee acts as an agent;
- (14)(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;
- (15) 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;
- (16)(a) disclose in writing to each party 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;
- (17)(a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;
- (18) use an approved addendum form to make a counteroffer or any other modification to a contract;
- (19) in order to sign or initial a document on behalf of a principal in a sales transaction:
 - (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);"
- (20) in order to sign or initial a document on behalf of a principal in a property management transaction:
 - (a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;
 - (b) retain in the file for the transaction a copy of the written authorization;
 - (c) sign as follows: "by (Licensee's Name), on behalf of Owner;" and
 - (d) initial as follows: "by (Licensee's initials), on behalf of Owner;"

(21) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(22) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(23) 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;

(24) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(25) as contemplated by Subsection 61-2f-401(20), 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. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

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

(1) An individual licensee may not:

(a) engage in any of the practices described in Section 61-2f-401 and the following sections, whether acting as agent or on the licensee's own account, in a manner that:

(i) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(ii) could jeopardize the public health, safety, or welfare; or

(iii) violates any provision of Title 61, Chapter 2f or the rules of this chapter;

(b) 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;

(c) make a misrepresentation to the division:

(i) in an application for license renewal; or

(ii) in an investigation.

(d)(i) 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

(ii) knowingly participate in a transaction in which such a false device is used;

(e) participate in a transaction in which a buyer enters into an agreement that:

(i) is not disclosed to the lender; and

(ii) if disclosed, might have a material effect on the terms or the granting of the loan;

(f) use or propose the use of a double contract;

(g) place a sign on real property without the written consent of the property owner;

(h) take a net listing;

(j) sell listed properties other than through the listing broker;

(j) subject a principal to paying a double commission without the principal's informed consent;

(k) 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;

(l) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(i) a licensee may give a gift valued at \$250 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(ii) as to a property management transaction, a licensee may compensate an unlicensed employee or previous or current tenant up to \$250 per lease for assistance in retaining an existing tenant or securing a new tenant;

(m) accept a referral fee from:

(i) a lender; or

(ii) a mortgage broker;

(n) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(i) mortgage loan originator, associate lending manager, or principal lending manager;

(ii) appraiser or appraiser trainee;

(iii) escrow agent; or

(iv) provider of title services;

(o) act or attempt to act as a limited agent in any transaction in which:

(i) the licensee is a principal in the transaction; or

(ii) any entity in which the licensee is an officer, director, partner, member, manager, employee, or stockholder is a principal in the transaction;

(p) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(i) the boilerplate provisions of the Real Estate Purchase Contract; or

(ii) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(q) advertise or offer to sell or lease property without the written consent of:

(i) the owner(s) of the property; and

(ii) if the property is currently listed, the listing broker;

- (r) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;
- (s) 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(24);
- (t) 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;
- (u) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;
- (v) in a short sale, have the seller sign a document allowing the licensee to lien the property; or
- (w) charge any fee that represents the difference between:
 - (i) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or
 - (ii) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.
- (2) The division may not bring an action for enforcement of either Subsection (1)(g) or Subsection (1)(q) after the expiration of four years following the occurrence of the violation.

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

- (1) A principal broker shall:
 - (a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;
 - (b) provide to the person whom the principal broker represents in a real estate 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;
 - (c)(i) regardless of who closes a real estate 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 real estate transaction receive copies of each document executed in the transaction closing;
 - (d) 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;
 - (e) 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;
 - (f) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;
 - (g) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;
 - (h)(i) except as provided in Subsection (1)(h)(iii), 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; and
 - (ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;
 - (iii) a principal broker is not required to comply with Subsection (1)(h)(i) or (ii) if:
 - (A) the contract or other written agreement states that the money is to be:
 - (I) held for a specific length of time; or
 - (II) as to a real estate transaction, deposited upon acceptance by the seller; or
 - (B) as to a real estate transaction, the Real Estate Purchase Contract or other written 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;

- (i)(i) maintain at the principal business location a complete record of any consideration received or escrowed for real estate and property management transactions; and
- (ii) be personally responsible at all times for deposits held in the principal broker's trust account;
- (j)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and
- (II) assign a unique identification to each property management client; and
- (B) include the transaction number or client identification, as applicable, on:
 - (I) trust account deposit records; and
 - (II) trust account checks or other equivalent records evidencing the transfer of trust funds;
- (ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;
- (iii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;
- (iv) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:
 - (A) in separate files; or
 - (B) in a single file holding any such offer; and
- (k) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in Subsection (1):
 - (i) actively supervise any such associate broker or branch broker; and
 - (ii) remain personally responsible and accountable for adequate supervision of each licensee and unlicensed staff affiliated with the principal broker.
 - (2) A branch broker shall:
 - (a) exercise active supervision over the conduct of each licensee and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker; and
 - (b) be personally responsible and accountable for any other responsibility and duty assigned to the branch broker by the principal broker and accepted by the branch broker.
 - (3) Neither a principal broker nor a branch broker shall be deemed in violation of failing to exercise active and reasonable supervision 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 and Provider 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);
 - (ii) obtain the student's signature on the criminal history disclosure; and
 - (iii) have the enrollee verify that an education waiver has not been obtained from the division;
 - (e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and
 - (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
 - (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) 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;
 - (k) substantiate, upon request by the division, any claims made in advertising; and
 - (l) include in all advertising materials the continuing education course certification number issued by the division.
- (2) Prohibited conduct. A provider 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 prelicense 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 about a competing school or continuing education provider including a misrepresentation regarding personnel, a course of instruction, or a business practice;
 - (g) disseminate advertisements or public notices that are false or disparage the dignity and integrity of the real estate profession;
 - (h) make false or 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) 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
 - (p) 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.

- (1) The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:
 - (a) September 1, 2017, Real Estate Purchase Contract;
 - (b) January 1, 1987, Uniform Real Estate Contract;
 - (c) October 1, 1983, All Inclusive Trust Deed;
 - (d) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;
 - (e) August 5, 2003, Addendum to Real Estate Purchase Contract;
 - (f) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;
 - (g) January 1, 1999, Buyer Financial Information Sheet;
 - (h) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;
 - (i) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;
 - (j) August 1, 2018, Lead-based Paint Addendum to Real Estate Purchase Contract; and
 - (k) August 1, 2018, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards; and
 - (l) January 1, 2018, Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract.

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) Except as provided for in subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.
- (2) When it is not reasonable for a licensee to identify the name of the brokerage in an electronic advertisement, the licensee shall ensure the electronic advertisement directly links to a display that clearly and conspicuously identifies the name of the brokerage.
- (3) A licensee is not required to identify the name of the brokerage with which the licensee is affiliated if:
 - (a) the licensee advertises a property not currently listed with the brokerage with which the licensee is affiliated;
 - (b) the licensee has an ownership interest in the property; and
 - (c) the advertisement identifies the name of the individual licensee as "owner-agent" or "owner-broker."
- (4) The name of the brokerage identified by a licensee in an advertisement shall be the name of the brokerage as shown on division records.
- (5) A team, group, or other marketing entity which includes one or more licensees shall be subject to the same requirements and restrictions with regard to advertising as is an individual licensee.
- (6)(a) If a licensee advertises a guaranteed sales plan, the advertisement shall include, in a clear and conspicuous manner:
 - (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(23).
- (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.

For auctions of real property in this state:

- (1) the auctioneer or auction company shall:
 - (a) be licensed as a principal broker under Utah Code Title 61, Chapter 2f; or
 - (b) affiliate with a licensed principal broker for purposes of advertising and conducting all aspects of the auction;
- (2) the auctioneer or auction company shall not advertise the services of the auctioneer or auction company directly to an owner of real property who is already subject to an agency agreement;
- (3) if an auctioneer or auction company affiliates with a principal broker as provided in Utah Administrative Code R162-2f-401i(1)(b), the principal broker shall:
 - (a) 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;
 - (b) ensure that advertising and promotional materials associated with an auction name the principal broker;
 - (c) attend and supervise the auction;
 - (d) ensure that any purchase agreement used at the auction is completed by an individual holding an active Utah real estate license and is filled out in compliance with Section 61-2f-306;
 - (e) ensure that any money deposited at the auction is placed in trust pursuant to Utah Administrative Code R162-2f-401c(1)(i); and
 - (f) 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 as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling each duty related to supervision per Section 61-2f-401(14), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or 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 rental unit;
- (b) providing secretarial, bookkeeping, maintenance, or rent collection services;
- (c) quoting rent and lease terms as established or approved by the principal broker;
- (d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

- (e) serving or receiving legal notices;
- (f) addressing tenant or neighbor complaints; and
- (g) inspecting units.

(4) Within 30 days of the termination of a contract with a property owner for property management services, the principal broker shall deliver any trust money to the property owner, the property owner's designated agent, or other party as designated under the contract with the property owner. If the principal broker delivers the trust money but fails to deliver it within the 30-day deadline, the division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

R162-2f-401k. Recordkeeping Requirements.

A principal broker shall:

(1) maintain and safeguard the following records to the extent they relate to the business of a principal broker:

(a) all trust account records;

(b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;

(c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and

(d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection R162-2f-401c(1)(f);

(2) maintain the records identified in Subsection R162-2f-401k(1):

(a)(i) physically:

(A) at the principal business location designated by the principal broker on division records; or

(B) where applicable, at a branch office as designated by the principal broker on division records; or

(ii) electronically, in a storage system that complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act;

and

(b) for at least three calendar years following the year in which:

(i) an offer is rejected; or

(ii) the transaction either closes or fails;

(3) upon request of the division, make any record identified in Subsection R162-2f-401k(1) available for inspection and copying by the division;

(4) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained; and

(5) upon filing for brokerage bankruptcy, notify the division in writing of:

(a) the filing; and

(b) the current location of brokerage records.

R162-2f-401l. Gifts and Inducements.

(1) An inducement gift is permissible and is not an illegal sharing of commission if the principal broker or affiliated licensee offering the inducement gift to a buyer or a seller complies with the underwriting guidelines that apply to any loan in the transaction for which the inducement has been offered.

(2) A closing gift is permissible and is not an illegal sharing of commissions.

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-403a. Trust Accounts - General Provisions.

- (1) A principal broker shall:
 - (a)(i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and
 - (ii) if engaged in property management, refer to Subsection R162-2f-403b(3);
 - (b) at the time a trust account is established, notify the division in writing of:
 - (i) the account number;
 - (ii) the address of the bank or credit union where the account is located; and
 - (iii) the type of activity for which the account is used.
 - (2) 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 Subsection (2)(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 Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.
 - (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) Records of deposits to a trust account shall include:
 - (a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);
 - (b) identification of payee and payor;
 - (c) amount of deposit;
 - (d) location of property subject to the transaction; and
 - (e) date and place of deposit.
 - (5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:
 - (a) the business name of the registered entity;
 - (b) the address of the registered entity;
 - (c) clear identification of the trust account from which the disbursement is made, including:
 - (i) account name; and
 - (ii) account number;
 - (iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);
 - (iv) date of disbursement;
 - (v) clear identification of payee and payor;
 - (vi) amount disbursed;
 - (vii) notation identifying the purpose for disbursement; and
 - (viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.
 - (6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.
 - (7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:
 - (a) interplead the funds into court and thereafter disburse:
 - (i) upon written authorization of the party who will not receive the funds; or
 - (ii) pursuant to the order of a court of competent jurisdiction; or
 - (b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:
 - (i) no party has filed a civil suit arising out of the transaction; and
 - (ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.
 - (8) If a principal broker is unable to disburse trust funds within three 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.
 - (9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:
 - (a) maintain a date-sequential record of each deposit to and disbursement from the account, including or cross-referenced to the information specified in Subsection R162-2f-401c(1)(k);
 - (b) maintain a current, running total of the balance contained in the trust account;
 - (c)(i) maintain records sufficient to detail the final disposition of any funds associated with each transaction; and

- (ii) ensure that each closed transaction balances to zero;
- (d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and
- (e) upon request, make all trust account records available to the division for auditing or investigation.
- (10) The principal broker shall notify the division within 30 days if:
 - (a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and
 - (b) the imbalance cannot be cured within the 30-day notification period.

R162-2f-403b. Real Estate Trust Accounts.

- (1) A real estate trust account shall be used for the purpose of securing client funds:
 - (a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f.;
 - (b) 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
 - (c) collected in the performance of property management duties, pursuant to Subsection (3).
- (2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than \$1,000 of the principal broker's own funds.
- (3)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust account that is:
 - (i) separate from the real estate trust account; and
 - (ii) operated in accordance with Subsection R162-2f-403c.
- (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.
- (4) Unless otherwise agreed pursuant to Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:
 - (a) obtaining written authorization from the buyer and seller, through contract or otherwise;
 - (b) closing or otherwise terminating the transaction;
 - (c) delivering the settlement statement to the buyer and seller;
 - (d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;
 - (e) making a record of each disbursement; and
 - (f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.
- (5) A principal broker may disburse funds from a real estate trust account only in accordance with:
 - (a) specific language in the Real Estate Purchase Contract authorizing disbursement;
 - (b) other proper written authorization of the parties having an interest in the funds; or
 - (c) court order.
- (6) 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.
- (7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:
 - (a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or
 - (b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

R162-2f-403c. Property Management Trust Accounts.

- (1) As of January 1, 2014, a trust account that is used exclusively for property management purposes shall be used to secure the following:
 - (a) tenant security deposits;
 - (b) rents; and
 - (c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses.
- (2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into a property management trust account any funds belonging to the principal broker without:
 - (a) maintaining records to clearly identify the total amount belonging to the principal broker; or
 - (b) performing a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the principal broker.
- (3) A principal broker may disburse funds from a property management trust account only in accordance with:
 - (a) specific language in the property management contract or tenant lease agreement, as applicable, authorizing disbursement;
 - (b) other proper written authorization of the parties having an interest in the funds; or
 - (c) court order.
- (4) A principal broker who transfers funds from a property management trust account for any purpose shall maintain records to clearly evidence that:
 - (a) prior to making the transfer, the principal broker verified the money as belonging to the property owner for whose benefit, or on whose instruction, the funds are transferred;
 - (b) any money transferred into an operating account as the principal broker's property management fee is earned according to the terms of the principal broker's contract with the property owner;

- (c) any transfer for maintenance, repair, or similar purpose is:
 - (i) authorized according to the terms of the applicable property management contract, tenant lease agreement, or other instruction of the property owner; and
 - (ii) used strictly for the purpose for which the transfer is authorized, with any excess returned to the trust account.

R162-2f-407. Administrative Proceedings.

- (1) An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.
- (2) Other adjudicative proceedings.
 - (a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be designated as either formal or informal in the division's notice of agency action or notice of proceeding, as applicable.
 - (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);
 - (b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing;
 - (c) appealing a division order denying or restricting a license; and
 - (d) when an application presents unusual circumstances, such that the division determines that the application should be heard by the commission.
 - (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 R151-4 et seq.; 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 30 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 R151-4-110(1)(a), an attorney may represent a party.
 - (5) Additional procedures for informal 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.
- (6) Formal adjudicative proceedings shall be conducted pursuant to the Administrative Procedures Act and the rules promulgated by the Department of Commerce.

R162-2f-501. Appendices.

- (1) When submitting evidence of qualifying experience which experience complies with the requirements in section R162-2f-401a as part of an application for licensure as a broker, an applicant shall select from the applicant's total qualifying experience at least 60 documented experience points and no more than 80 documented experience points for review and approval by the division.
- (2) When calculating experience points in Table 1, experience points for a transaction subject to an agency agreement other than an exclusive brokerage agreement as defined in Utah Code Subsection 61-2f-308(1)(d) are limited to one-quarter of the points described in Table 1.
- (3) When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in the state of Utah.

TABLE 1
APPENDIX 1 - REAL ESTATE SALES 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

TABLE 2
APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT
EXPERIENCE TABLE

RESIDENTIAL

(a) Each property management agreement	1 point per unit up to 5 points
(b) Each unit leased	1.25 points per unit
* (c) All other property management	0.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(a) Each property management agreement	1 point per unit up to 5 points

(b) Each unit leased	1.25 points per unit
*(c) All other property management	1 pt/month

*When calculating experience points from Table 2, the total combined monthly experience credit claimed for "All other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.

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, operational requirements, trust account records, notification requirements

Date of Enactment or Last Substantive Amendment: October 21, 2020

Notice of Continuation: March 26, 2020

Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307