

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):

R162-2f

Filing No. 53376

Agency Information

1. Department:	Commerce	
Agency:	Real Estate	
Room no.:	2nd Floor	
Building:	Heber M. Wells	
Street address:	160 E 300 S	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146711	
City, state, zip:	Salt Lake City, Utah 84114-6711	
Contact person(s):		
Name:	Phone:	Email:
Justin Barney	801-530-6603	justinbarney@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R162-2f. Real Estate Licensing and Practices Rule
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
<p>The reasons for filing the proposed rule amendment are:</p> <ol style="list-style-type: none"> 1) to eliminate the mandatory denial of an application for licensure due to an applicant's criminal history; 2) to simplify and, in rare instances, extend the deadline for application for licensure; 3) to approve an alternative format for continuing education in a live, virtual setting; 4) to differentiate between an assumed name and an entity for registration purposes; 5) to provide detail and clarity to a broker's obligation to provide active and reasonable supervision of licensees and unlicensed staff members supervised by the broker; and 6) to distinguish between, to clarify, and to supplement the trust account rules for a real estate sales company and a property management company.
4. Summary of the new rule or change:
<p>In Section R162-2f-102, the proposed amendment would add "mandatory course" to the definition of "continuing education" and add the definition of "virtual-live continuing education" to this rule.</p> <p>In Section R162-2f-20, the proposed amendment would eliminate the requirement to deny an application for licensure of an applicant who was:</p> <ol style="list-style-type: none"> 1) convicted of a felony, or was released from jail or prison for a felony, within five years preceding the date of application; or 2) convicted of or released from jail or prison for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty, within three years preceding the date of application. <p>Instead of the mandatory denial, the proposed amendment would provide discretion to the Division of Real Estate (Division) in evaluating whether to deny a license, or to issue a restricted license, to an applicant with such criminal history. The proposed amendment provides that the Division give particular consideration to such felonies or misdemeanors in reaching a licensing decision.</p> <p>In Section R162-2f-202a, the proposed amendment clarifies that an individual must pass both the state and national components of the licensing examination within 12 months of completion of the applicant's prelicensing education and simplifies, and in rare circumstances extends, the deadline for application which would be 90 days from the date the applicant achieves a passing score on both examination components.</p> <p>In Section R162-2f-202b, the proposed amendment updates references to other rule sections.</p> <p>In Section R162-2f-204, the proposed amendment updates references to other rule sections.</p> <p>In Section R162-2f-205, the proposed amendment would add "assumed name" as a category of businesses that are required to register with the Division.</p> <p>In Section R162-2f-206c, the proposed amendment would add virtual-live continuing education (CE) to the approved categories</p>

of CE. Although virtual-live CE was initially developed in response to the social distancing required by the Covid-19 pandemic, it is not a temporary solution but would be a permanent option for CE instruction. CE providers are not required to provide virtual-live CE, but this is an optional format that may be used to reach potential participants. The proposed rule amendment would establish minimum standards for virtual-live CE including class size limits, the use of monitoring assistants, and communication requirements including microphones and live cameras. The proposed amendment would not change or restrict the existing CE options of traditional CE and distance education. In addition, the proposed amendment also lists the types or options of mandatory CE courses that were provided for in a prior approved rule amendment.

In Section R162-2f-401c, under existing law and rule, a broker is required to provide active and reasonable supervision of each licensee and unlicensed staff member employed by or affiliated with the broker. The proposed amendment provides direction to brokers as to the minimum standard for active and reasonable supervision while retaining the safe harbor to protect a broker who meets the minimum standard from liability for violations of law or rule by persons required to be supervised by the broker.

In Section R162-2f-401j, the proposed amendment updates a reference to a section of the Utah Code.

In Section R162-2f-401k, the proposed amendment clarifies that:

- 1) monthly reconciliation records are among those trust account records required to be maintained and safeguarded by a broker; and
- 2) a broker must maintain records from a lease transaction for at least three years following the year in which the lease agreement is terminated.

In Section R162-2f-403a, the proposed amendment rearranges and combines the provisions of trust account rules currently found in Sections R162-2f-403a and R162-2f-403b for a real estate company and adds the following provisions:

- 1) a broker must notify the Division if the trust account is moved to another bank or credit union or the trust account number is changed;
- 2) non-traditional electronic transfers of funds would be expressly allowed;
- 3) a broker is required to reconcile brokerage trust account records with the brokerage client records at least monthly;
- 4) a broker is required to transfer funds out of the trust account and into an operating account prior to further disbursing the funds; and
- 5) with the client's written consent, a broker may reallocate earnest money funds from a failed transaction held in a trust account as earnest money for the same client in another transaction.

In Section R162-2f-403b, the proposed amendment rearranges and combines the provisions of trust account rules currently found in Sections R162-2f-403a and R162-2f-403c for a property management company and adds the following provisions:

- 1) a broker must notify the Division if the trust account is moved to another bank or credit union or the trust account number is changed;
- 2) non-traditional electronic transfers of funds would be expressly allowed;
- 3) a broker is required to reconcile brokerage trust account records with the brokerage client records at least monthly;
- 4) a broker may deposit up to \$10,000 of the broker's own funds into a property management trust account;
- 5) a broker must transfer earnings for property management services out of the trust account and into an operating account within 60 days of the date the earnings are earned according to contract and received; and
- 6) a broker is required to transfer funds out of the trust account and into an operating account prior to further disbursing the funds.

In Section R162-2f-403c, the current provisions of this section have been combined into Section R162-2f-403b. The proposed rule amendment would delete this section.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendment updates and clarifies this rule. In some instances, new options are available to licensees of the Division. The Division already has the staff and budget to administer the proposed rule amendment. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact or result in any additional cost or savings to the state budget.

B) Local governments:

Local governments are not required to comply with or enforce the Real Estate Licensing and Practices Rule. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

The amendment to the Department of Commerce's (Department) Real Estate Licensing and Practices Rule are minimal and will have no impact on the costs required for a small business requesting information from the Department. The amendments as a whole should allow for greater efficiency and clarity for procedures with the Department and its constituents. Accordingly, no fiscal impact is expected as these costs are either inestimable or there is no fiscal impact.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed amendment does not create new obligations for non-small businesses, nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to non- small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The proposed amendment does not create new obligations for persons other than small businesses, non-small businesses, state, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

Many of the proposed rule amendments are clarifications of the existing rule and do not create new obligations for affected persons. These clarifications will not result in an increased compliance cost to affected persons.

The new option of certifying and a providing a course by offering a virtual-live CE course is not mandatory and does not create a new obligation. If the proposed amendment is adopted and a CE provider chooses this format to offer a CE course, this decision will be a market decision based on the cost of providing a virtual-live CE course as compared to other available options, the number of potential participants, and other expenses and income anticipated from the course offering. The Division is not able to estimate the number of virtual-live courses that providers may seek to have certified or the relative costs and revenue of such a course when compared to the current options available to course providers which are traditional CE courses or distance education. No CE provider is required to offer a virtual-live CE course but may choose to do so as an alternative to the existing options. The Division is unable to estimate the fiscal impact of the proposed amendment on CE course providers.

The fiscal impact of a virtual-live CE course to a licensee who needs to obtain required CE also cannot be estimated. The Division is unable to estimate the number of virtual-live CE courses that CE providers will seek to have certified or the cost of participating in such a course as compared to the current available options of traditional CE courses and distance education. However, the Division believes that approving another format for offering CE will improve market options for both CE providers and licensees needing to complete required CE. An individual licensee is not expected to incur a compliance cost or fiscal impact from the proposed amendment. The required number of CE hours remains unchanged by the proposed rule amendment. A licensee is still only required to take 18 hours of CE every two years.

The proposed amendment does create new obligations for principal brokers with regard to required trust accounts such as the requirement that the principal broker notify the Division when a trust account is moved or the account number changed. The Division does not know how often a change in the trust account might occur but estimates that it occurs quite infrequently. In those infrequent occasions when notification of the Division is required, the cost of notifying the Division would be the cost of preparing a letter or the time to draft an email. As the Division is not able to determine whether or how often such a notification may be required, it is unable to estimate the compliance costs for this proposed amendment and expects that any cost will be nominal and cannot be calculated at this time.

The proposed rule amendment would require that a principal broker reconcile brokerage trust account records with the brokerage client records at least monthly. The Division is informed and understands that the majority, by far, of real estate brokerages already reconcile the brokerage trust funds with their brokerage client records each month as a common business practice. The costs of doing so depend on the number of clients the broker represents and the number of transactions for which the brokerage receives funds for deposit into the trust account. In many transactions, there are no trust funds received by the brokerage. The Division is unable to estimate the fiscal impact of the proposed amendment on a principal broker. Other proposed amendments to the trust account rules are not expected to result in a compliance cost to affected persons.

Affected persons most often choose a corporation, limited liability company, or other entity from which they operate their real estate business. In those rare occasions when a licensee chooses to operate their real estate business as an assumed name, the proposed amendment requires that they register the assumed name with the Division. There is a one-time application fee to register the assumed name with the Division. The Division estimates that registration of an assumed name will occur less than one time each year. Assuming it would occur once per year, the cost of registering the assumed name with the Division is \$200 per year.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$200	\$200	\$200
Total Fiscal Cost	\$200	\$200	\$200
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	-\$200	-\$200	-\$200

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret Busse, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

I have reviewed the proposed filing for the above-referenced rule and considered the fiscal impact that the rule may have on businesses. I direct that my comments about the rule's fiscal impact on businesses be inserted at the appropriate place on the notice form to be filed with the Office of Administrative Rules for publication of this rulemaking action.

The Department of Commerce Administration proposes amendments to update the Department of Commerce's Real Estate Licensing and Practices Rule. Minimal amendments have been made to update language to conform to Utah rulewriting standards, rewrite the language for requests to be simpler, and make non-substantive formatting changes for clarity.

B) Name and title of department head commenting on the fiscal impacts:

Margaret Busse, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 61-2f-103	Section 61-2f-204	Section 61-2f-206
Section 61-2f-305	Section 61-2f-401	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 05/31/2021

10. This rule change MAY become effective on (mm/dd/yyyy): 06/07/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Jonathan Stewart, Director	Date (mm/dd/yyyy):	04/05/2021
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R162. Commerce, Real Estate.

R162-2f. Real Estate Licensing and Practices Rule[s].

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 this rule; [these rules;]
 - (b) pays [aH]-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:"["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, Real Estate Licensing and Practices Act,~~[-et seq. and these rules]~~ and this rule; 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 S[ubs]ection 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(6)(c);[R162-2f-206e(5)(e); or]
 - (b) elective[;] topics identified in Subsection R162-2f-206c(6)(c)[R162-2f-206e(5)(e).]; or
 - (c) mandatory courses identified in Subsection R162-2f-206c(6)(f).
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- (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 each of the[aH] 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 each [aH]-principal[s] 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, Real Estate Licensing and Practices Act, [~~et seq. and these rules~~]and this rule 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 S[ubs]ection 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 S[ubs]ection 61-2f-102[(22)].

(33) "Reissuance" is defined in S[ubs]ection 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 S[ubs]ection 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 both the instructor and students [aH]-are physically present in the same classroom.

(41) "Undivided fractionalized long-term estate" is defined in S[ubs]ection 57-29-102[(8)].

(42) "Virtual-live continuing education" means continuing education that is presented in a live, video conferencing format, using interactive instructional methods where teacher and student may be separated by distance but not by time. The teacher is able to interact, and does interact in real time with the students.

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.]~~

~~(a)](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 with particular consideration given to any such acts involving:~~[other than those specified in Subsection (1)(a);]~~

~~(A) a felony conviction occurring within the five years preceding the date of application;~~

~~(B) a jail or prison term resulting from a felony conviction with a release date falling within the five years preceding the date of application;~~

~~(C) a conviction of a class A or class B misdemeanor, or similar offense, involving fraud, misrepresentation, theft, or dishonesty occurring within the three years preceding the date of application; or~~

~~(D) a jail term resulting from a conviction of a class B or class A misdemeanor, or similar offense, involving fraud, misrepresentation, theft, or dishonesty with a release date falling within the three years preceding the date of application;~~

(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.

~~(b)(i)](e)(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 (1) 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) The deadlines for sales agent licensing are as follows:~~[Deadlines.]~~

(a) An individual shall pass both the state and national components of the licensing examination within 12 months of the date on which the individual completes the preclicensing education.

~~(b)(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.

~~(c)(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].

~~(d)(e)~~ If any deadline in this ~~[S]~~ection ~~[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 preclicensing 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 Section 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~~]~~ and R162-2f-403b~~], and R162-2f-403e]~~ 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]~~ individual 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 for passing tests and submitting an application are as follows:]-~~
 - (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 ~~s]~~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 ~~[Subs]~~Sections R162-2f-401~~], R162-2f-403a, and R162-2f-403b.[-and R162-2f-403a-403e.]~~
 - (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-204. License Renewal or Reinstatement.

(1) ~~[Renewal period and deadlines.~~

—(a) A license issued under this rule~~[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 S[s]ubsection (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 Sections R162-2f-403a and R162-2f-403b.~~[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 Required.~~[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.]

(1) A principal broker may not engage in any activity described in Section 61-2f-201 through:

(a) an entity as defined in Section 61-2f-102;

(b) a branch office;

(c) an assumed name; or

(d) a separate property management company;

without first registering the entity, branch office, assumed name, or separate property management company with the division.

(2) ~~[Exemptions.]~~ The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register ~~[an entity]~~ with the division, a principal broker shall:

(a) evidence that the name of the registrant ~~[entity]~~ is registered with the Division of Corporations;

(b) certify that the registrant ~~[entity]~~ is affiliated with a principal broker who:

(i) is authorized to use the ~~[entity]~~ name of the registrant; 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]~~ submit an application that identifies:

(i) the branch broker who will actively supervise each licensee and unlicensed staff working from the branch office;

~~[_____] (d) submit an application that includes:]~~

~~(ii) [(i)]~~ the physical address of the branch office ~~[entity]~~;

~~(iii) [(ii)]~~ ~~[if the entity is a branch office,]~~ the name and license number of the branch broker;

~~(iv) [(iii)]~~ the names of associate brokers and sales agents assigned to the branch office ~~[entity]~~; and

~~(v) [(iv)]~~ the location and account number of each ~~[any]~~ real estate and property management trust account ~~[(s)]~~ in which funds received at the registered location will be deposited;

~~(d) [(e)]~~ if the applicant is not a branch office, submit an application that identifies ~~[inform the division of:]~~

(i) the location and account number of each operating account ~~[any operating account(s)]~~ used by the registrant ~~[registered entity]~~; and

(ii) the location where brokerage records will be kept; and

~~(e) [(f)]~~ pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division may ~~[shall]~~ not register a registrant ~~[an entity]~~ proposing to use a business name that:

(A) is likely to mislead the public into thinking that the registrant ~~[entity]~~ is not a real estate brokerage or property management company;

(B) closely resembles the name of another registrant of the division ~~[registered entity]~~; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of a registrant's ~~[an entity's]~~ business name does not ensure or grant to the registrant ~~[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) A registrant ~~[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 registrant ~~[registered entity]~~ shall be maintained in a bank or credit union located in the state ~~[of Utah]~~.

(5) Registration not transferable.

(a) A registrant may ~~[registered entity shall]~~ may not transfer the registration to any other person.

(b) A registrant ~~[registered entity shall]~~ may not allow an unlicensed person to use the registrant's ~~[entity's]~~ registration to perform work for which licensure is required.

(c) If a change in ~~[corporate]~~ structure of a registrant ~~[registered entity]~~ creates a separate and unique legal entity, branch office, assumed name, or separate property management company, the principal broker ~~[that entity]~~ shall obtain a unique registration, and may ~~[shall]~~ not operate under an existing registration.

(d) The dissolution or termination of an entity, branch office, assumed name, or separate property management company ~~[of a corporation, partnership, limited liability company, association, or other entity]~~ registered with the division terminates the registration.

~~(6) The division may not bring an action for enforcement of this Section after the expiration of four years following the occurrence of the violation.~~

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 [aH]-materials to be distributed to participants;
- (k) signed statement in which the course provider and each 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)~~] or dates the course was taught;
 - (D) number of credit hours; and
 - (E) names and license numbers of each [aH]-student[s] 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 the [aH]-course delivery methods and the [aH]-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) To certify a continuing education course for virtual-live continuing education, a person shall:
 - (a) comply with Subsection (2);
 - (b) submit to the division a complete description of the course delivery methods and the 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.
- ~~(5)(4) Minimum standards.~~
 - ~~(a) [Except for distance education courses, aH]Traditional continuing education courses shall be taught in an appropriate classroom facility and not in a private residence.~~
 - ~~(b) Except for a division approved virtual-live single session convention continuing education course as provided for in Subsection (5)(c), virtual-live continuing education courses are restricted as follows:~~
 - ~~(i) each course with a class size of one to 50 students shall have at least one non-instructor monitoring assistant;~~
 - ~~(ii) each course with a class size of between 51 and 100 students shall have at least two non-instructor monitoring assistants;~~
 - ~~(iii) the division may not approve a virtual-live continuing education course for more than 100 students, regardless of the number of non-instructor monitoring assistants;~~
 - ~~(iv) each student shall participate in the course with an adequately functioning microphone and live camera that is monitored by a non-instructor monitoring assistant; and~~
 - ~~(v) the course instructor shall instruct using an adequately functioning microphone and live camera such that the instructor may be heard and seen during instruction by student participants.~~
 - ~~(c) The division may approve a virtual-live single session convention continuing education course on a per course basis that is designed to meet the needs of students without limitation of the number of participating students.~~
 - ~~(d)[(b)] The minimum length of a course shall be one credit hour.~~
 - ~~(e)[(e) Except for online courses, t] The procedure for taking attendance shall be more extensive than having the student sign a class roll.~~
 - ~~(f)[(d)] The completion certificate shall include[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.

(6)[(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 each form or contract ~~[the form(s) or contract(s)]~~ taught in the course;
- (ii) obtain permission for licensees to subsequently use each form or contract ~~[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) Mandatory Courses include the following:

(i) the Mandatory Residential Course;

(ii) the Mandatory Property Management Course; or

(iii) the Mandatory Commercial Course.

(g)[(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.

(7)[(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 the [aH]-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 the [aH]-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 (7)[(6)-] falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

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

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of S[ubs]ection 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 rule [rules-] governing real estate auctions, as outlined in Section R162-2f-401i;

(g) strictly adhere to the rule [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; and [-]

(l) exercise active and reasonable supervision over the conduct of each licensee and unlicensed staff employed by or affiliated with the principal broker.

(2) A branch broker shall:

(a) exercise active and reasonable 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) Active and reasonable supervision includes:

(a) the establishment of:

(i) written policies, rules, and procedures; and

(ii) systems that allow the broker to review, oversee, inspect, and manage:

(A) real estate transactions performed by a licensee affiliated with the broker at either the main office or a branch supervised by the broker;

(B) documents that may have a material effect upon the rights or obligations of a party to such real estate transaction;

(C) the filing, storage, and maintenance of such documents;

(D) the handling of trust funds;

(E) advertising of any service for which a real estate license is required;

(F) familiarizing licensees with the requirements of federal and state law governing real estate transactions including prohibitions against discrimination;

(G) to ensure that each person conducting licensed activity on behalf of the broker holds an active license;

(H) to ensure that each affiliated licensee is able to maintain reasonable and timely communication with the supervising broker or a competent designee to assist the licensee with real estate transactions handled by the brokerage; and

(I) to maintain adequate, reasonable, and regular contact with each affiliated licensee engaged in real estate transactions so as to prevent or curtail practices by a licensee that would violate the provisions of this chapter;

~~(b) being reasonably available to the public in order to discuss or resolve complaints and disputes that may arise during the course of a real estate transaction in which the broker or affiliated licensee is involved;~~

~~(c) providing guidance to, and instruction and oversight of, each licensee and unlicensed staff member regarding the policies, rules, procedures, and systems of the brokerage;~~

~~(d) documenting the instruction and oversight provided pursuant to Subsection (3)(b); and~~

~~(e) establishing a system for monitoring compliance with the policies, rules, and procedures, and systems of the brokerage by licensees and unlicensed staff members.~~

~~(4) A principal broker or branch broker may use a licensee or unlicensed staff member to assist in administering the provisions of Subsection (3), except that the broker may not relinquish overall responsibility for active and reasonable supervision of the acts of licensees and unlicensed staff members affiliated or associated with the broker.~~

~~(5) In establishing such policies, rules, procedures, and systems, the broker shall consider the number of sales agents and associate brokers and the number and location of branch offices supervised by the broker.~~

~~(6)(3) A principal broker and a branch broker are responsible for violations of Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and the rules promulgated thereunder by licensees and unlicensed staff members they supervise, except that [N]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;]~~

~~(a)[(b)] the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;~~

~~(b)[(c)] reasonable procedures were established by the broker to ensure that licensees receive active and reasonable [adequate] supervision and the broker has followed those procedures;~~

~~(c)[(d)] upon learning of the violation, the broker attempted to prevent or mitigate the damage;~~

~~(d)[(e)] the broker did not participate in the violation;~~

~~(e)[(f)] the broker did not ratify the violation; and~~

~~(f)[(g)] the broker did not attempt to avoid learning of the violation.~~

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 Subsection 61-2f-401(12), [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 this rule. [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, including the monthly reconciliation of the trust account;

(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; or

(iii) in a lease transaction, the termination of the lease agreement;

(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-403a. Trust Accounts - Real Estate Company. [General Provisions.]

(1) The [A-] principal broker of a real estate company 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 trust account rules in Section R162-2f-403b;~~[Subsection R162-2f-403b(3);]~~

(b) at the time a real estate trust account is established, or if the trust account is moved to another bank or credit union or the trust account number is changed, 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 real estate 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 real estate trust account shall include:

(a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(j);~~[R162-2f-401e(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) Except for electronic transfers provided for in Subsection (6), any ~~[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 by which funds are disbursed from a real estate or property management trust account shall include those items required in Subsection (5), except when a required item is not able to be included due to the inherent limitations of such instrument. In a circumstance in which any item required by Subsection (5) is not included in the instrument, the principal broker shall still comply with the reconciliation requirements of this section and Section R162-2f-401k.

~~(7)[(6)]~~ Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to ~~S[ubs]ection R162-2f-401k.~~

~~(8)[(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.

~~(9)[(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, Revised Uniform Unclaimed Property Act.

~~(10)[(9)]~~ Trust account reconciliation requirements are as follows:~~[-]~~ 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 a ~~[ø-]~~ cross-reference~~[d]~~ to the information specified in Subsection R162-2f-401c(1)(j);~~[R162-2f-401e(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) reconcile the brokerage trust account records with the brokerage client account records at least monthly; and

~~(f)[(e)]~~ upon request, make the ~~[aH-]~~ trust account records available to the division for auditing or investigation.

~~(11)[(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.

(12) 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, Real Estate Licensing and Practices Act;

(b) deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling, if the principal broker is also a builder or developer; or

(c) collected in the performance of property management duties, pursuant to Subsection (13).

(13) A principal broker violates Subsection 61-2f-401(4)(b) if:

(a) the principal broker:

(i) deposits more than \$1000 of the principal broker's own funds into a real estate trust account; or

(ii) fails to transfer funds due to the principal broker or an affiliated licensee into the operating account within 60 days from the closing or termination of the real estate transaction; or

(iii) fails to transfer earnings for property management services out of the property management trust account and into an operating account within 60 days of the date the earnings are earned according to contract and received.

(14) A principal broker of a real estate sales company 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:

(a) separate from the real estate trust account; and

(b) operated in accordance with Section R162-2f-403b.

(15) A principal broker may not pay a commission from a real estate trust account, without first:

(a) obtaining written authorization from the buyer and seller, or other parties having an interest in the funds, 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 the funds into the principal broker's operating account prior to further disbursing the funds.

(16) 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;

(c) this section; or

(d) court order.

(17) 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.

(18) 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.

(19) With the client's written consent, a principal broker may reallocate earnest money funds from a failed transaction held in a trust account as earnest money for the same client in another transaction.

R162-2f-403b. [Real Estate-]Trust Accounts - Property Management Company.

[(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-403e.

(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.]~~

~~_____ (1) The principal broker of a property management company shall:~~

~~_____ (a)(i) if regularly engaged in property management on behalf of seven or more individual units, establish at least one property management trust account that is separate from the principal broker's real estate trust account and is maintained in a bank or credit union located within the state of Utah; and~~

~~_____ (ii) if engaged in listing or selling real estate, or if regularly engaged in property management on behalf of six or fewer individual units, maintain at least one real estate trust account in a bank or credit union located within the state of Utah and maintained pursuant to Section R162-2f-403a;~~

~~_____ (b) at the time a property management trust account is established, or if the trust account is moved to another bank or credit union or the trust account number is changed, notify the division in writing within ten business days 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 property management 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 transaction;~~

~~_____ (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 property management 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 property management trust account shall include:~~

~~_____ (a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(j);~~

~~_____ (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) Except for electronic transfers provided for in Subsection (6), 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;~~

~~_____ (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 by which funds are disbursed from a real estate or property management trust account shall include those items required in Subsection (5), except when a required item is not able to be included due to the inherent limitations of such instrument. In a circumstance in which any item required by Subsection (5) is not included in the instrument, the principal broker shall still comply with the reconciliation requirements of this section and Section 401k.~~

~~_____ (7) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Section R162-2f-401k.~~

~~_____ (8) If more than one party to a contract makes 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 parties 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 more than one party claims 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.~~

~~_____ (9) If a principal broker is unable to disburse trust funds within three years after the funds are due to be disbursed, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.~~

~~_____ (10) Trust account reconciliation requirements are as follows: 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 a cross-reference to the information specified in Subsection R162-2f-401c(1)(j);~~

~~_____ (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 the 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;~~

~~_____ (e) reconcile the brokerage trust account records with the brokerage client accounts at least monthly; and~~

~~_____ (f) upon request, make the trust account records available to the division for auditing or investigation.~~

~~_____ (11) 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.
- (12) A property management trust account shall be used for the purpose of securing:
- (a) tenant security deposits;
 - (b) rents;
 - (c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses; and
 - (d) if the principal broker has not established a separate real estate trust account, client funds deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.
- (13) A principal broker violates Subsection 61-2f-401(4)(b) if:
- (a) the principal broker deposits into a property management trust account funds belonging to the principal broker without:
 - (i) maintaining records to clearly identify the total amount belonging to the principal broker; or
 - (ii) performing a monthly line-item reconciliation of the deposits and withdrawals of funds belonging to the principal broker; or
 - (b) the principal broker:
 - (i) deposits more than \$10,000 of the principal broker's own funds into the property management trust account; or
 - (ii) fails to transfer earnings for property management services out of the property management trust account and into the operating account within 60 days from the date the earnings are earned according to contract and received.
- (14) 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;
 - (c) this section; or
 - (d) court order.
- (15) 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 a commission or for 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.
- (16) A principal broker may not pay a commission or transfer funds for the principal broker's property management fee directly from the property management trust account but shall first deposit the funds into the principal broker's operating account prior to further disbursing the funds.

[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.]

KEY: real estate business, operational requirements, trust account records, notification requirements

Date of Enactment or Last Substantive Amendment: ~~2021~~[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

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