

**NOTICE OF PROPOSED RULE**

TYPE OF FILING: Amendment

Rule or Section Number:

R162-2f

Filing ID: 55454

**Agency Information**

|   |                               |                       |
|---|-------------------------------|-----------------------|
| <b>1. Department:</b>   | Commerce                      |                       |
| <b>Agency:</b>  | Real Estate                   |                       |
| <b>Room number:</b>   | 2nd Floor                     |                       |
| <b>Building:</b>  | Heber M Wells                 |                       |
| <b>Street address:</b>  | 160 E 300 S                   |                       |
| <b>City, state and zip:</b>   | Salt Lake City, UT 84101      |                       |
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| <b>Contact persons:</b>   |                               |                       |
| <b>Name:</b>  | <b>Phone:</b>                 | <b>Email:</b>         |
| Justin Barney   | 801-530-6603                  | justinbarney@utah.gov |
| <b>Please address questions regarding information on this notice to the persons listed above.</b> |                               |                       |

**General Information**

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| <b>2. Rule or section catchline:</b>   |
| R162-2f. Real Estate Licensing and Practices Rules   |
| <b>3. Reason for this change:</b>  |
| The Division of Real Estate (Division), in concert with the Real Estate Commission, propose amendments to Rule R162-2f to accommodate situations that may arise in the event of the sudden death or incapacity of a principal broker, when no provisions have been made for a successor principal broker.<br><br>The Division wishes to expand the core continuing education topics, to relax the requirements for a broker applicant currently licensed in another state, to allow a broker applicant to acquire partial experience, and to eliminate a form from the forms list.<br><br>Also, the Division has made formatting conformities throughout the rule to align with the Utah Rulewriting Manual in accordance with Executive Orders No. 2021-1 and 2021-12.  |
| <b>4. Summary of this change:</b>  |
| The proposed amendment would: 1) allow a broker applicant to accumulate partial experience points for a portion of the total number of experience points required to qualify for licensure, thus allowing some applicants to qualify for licensure sooner, and in some instances, with less overall experience; 2) allow certain broker applicants who are already licensed as a real estate broker in another state to qualify for licensure in Utah without repeating the national portion of prelicensing education or the national component of the licensing exam, saving the applicant both time and money; 3) authorize the Real Estate Commission to designate an acting principal broker in the event of the death or incapacity of a principal broker under circumstances in which a real estate brokerage fails to replace the deceased or incapacitated principal broker within 14 days to close out active and pending transactions but would not to represent new clients or continue the activities of the brokerage for more than four months; 4) add additional topics to the list of approved continuing education core topics; and 5) eliminate the outdated state approved Uniform Real Estate Contract. |

**Fiscal Information**

|   |
|---|
| <b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>  |
| <b>A) State budget:</b>   |
| The Division has the staff and budget in place to administer the proposed amendment. None of the proposed changes are expected to impact the state's budget by either increasing costs or generating savings.<br><br>After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in any cost or savings to the state budget. |
| <b>B) Local government:</b>   |
| Local governments are not required to comply with or enforce the Real Estate Licensing and Practices Rules. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to local governments.   |
| <b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>  |

The proposed rule amendment would restructure the courses for broker applicants. Under the proposed amendment, the Division believes that 12 to 24 brokers already licensed in another state will apply each year for licensure as a broker in Utah.

The Division feels that one-half of these applicants already apply for and are granted a waiver of a portion of the pre-licensing education under the current rule.

The Division believes that 6 to 12 applicants per year may qualify for reduced pre-licensing education hours. The cost of pre-licensing education hours could average \$10 per hour for the education. The Division estimates that eight applicants would purchase a total of 80 fewer hours each per year resulting in a fiscal cost to small business education providers of \$6,400 per year.

Ultimately, the Division estimates the fiscal impact in possible lost revenue to small business education providers would be approximately \$6,400 per year beginning in fiscal year 2024.

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

After conducting a thorough analysis, the Division finds that the non-small businesses in Utah will not suffer a negative fiscal impact from the proposed changes, or, if there is a negative fiscal impact, the impact is inestimable.

**E) Persons other than small businesses, non-small businesses, or 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:**

Affected persons include real estate broker applicants who will qualify for application for licensure with fewer pre-license education hours. The proposed rule amendment does not create new obligations for affected persons nor does it increase the cost associated with any existing obligation.

The proposed rule amendment does provide for a reduction in educational requirements for broker applicants for licensure in Utah who are already licensed in another state. This option would result in a fiscal benefit in the form of cost savings to affected persons in the amount that they would not need to pay to education providers (see paragraph C, fiscal information for small businesses).

After conducting a thorough analysis, it was determined that the lower cost for pre-license education paid by affected persons would result in fiscal benefit of approximately \$6,400 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.)

| <b>Regulatory Impact Table</b> |                |                |                |
|--------------------------------|----------------|----------------|----------------|
| <b>Fiscal Cost</b>             | <b>FY2024</b>  | <b>FY2025</b>  | <b>FY2026</b>  |
| State Government               | \$0            | \$0            | \$0            |
| Local Governments              | \$0            | \$0            | \$0            |
| Small Businesses               | \$6,400        | \$6,400        | \$6,400        |
| Non-Small Businesses           | \$0            | \$0            | \$0            |
| Other Persons                  | \$0            | \$0            | \$0            |
| <b>Total Fiscal Cost</b>       | <b>\$6,400</b> | <b>\$6,400</b> | <b>\$6,400</b> |
| <b>Fiscal Benefits</b>         | <b>FY2024</b>  | <b>FY2025</b>  | <b>FY2026</b>  |
| State Government               | \$0            | \$0            | \$0            |
| Local Governments              | \$0            | \$0            | \$0            |
| Small Businesses               | \$0            | \$0            | \$0            |
| Non-Small Businesses           | \$0            | \$0            | \$0            |
| Other Persons                  | \$6,400        | \$6,400        | \$6,400        |
| <b>Total Fiscal Benefits</b>   | <b>\$6,400</b> | <b>\$6,400</b> | <b>\$6,400</b> |
| <b>Net Fiscal Benefits</b>     | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of Commerce, Margaret Busse, has reviewed and approved this regulatory impact analysis.

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

|                         |                         |                         |
|-------------------------|-------------------------|-------------------------|
| Section 61-2f-103       | Subsection 61-2f-202(6) | Subsection 61-2f-203(1) |
| Subsection 61-2f-206(8) | Subsection 61-2f-306(3) | Section 61-2f-401(13)   |

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 07/31/2023

**9. This rule change MAY become effective on:** 08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

|   |                               |              |            |
|---|-------------------------------|--------------|------------|
| <b>Agency head or designee and title:</b> | Jonathan C. Stewart, Director | <b>Date:</b> | 04/05/2023 |
|---|-------------------------------|--------------|------------|

**R162. Commerce, Real Estate.**

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

**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 before 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 (5)(a)[(3)(a)], take and pass both the state and national components of the licensing examination;
  - (f)(i) unless Subsection (4)(a)[(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 "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 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 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 email 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 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 from any operating accounts of the registered entity for which the individual will serve as principal broker; and

(l) if applying for licensure as a principal broker, identify the locations where brokerage records will be kept.

(2) A broker applicant must accumulate a minimum of 45 experience points of the minimum 60 required experience points according to Experience Tables 1, 2, or 3, Section R162-2f-501, Appendices, which experience points comply with agency requirements specified in Section R162-2f-401a. A broker applicant may receive partial experience points for up to 15 of the 60 required experience points if the applicant can successfully document from signed agency agreements or purchase contracts that the applicant created or confirmed their agency with the clients they represented. Partial experience points must be documented from the transactions originally submitted by applicant totaling the maximum of 80 experience points and approved for partial experience points by the division.

(3) To obtain a Utah license to practice as a broker, an individual who is currently and actively licensed as a broker 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) successfully complete division approved prelicensing education relating to Utah law and administrative rules;

(d)(i) apply with a testing service designated by the division to sit for the state component of the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to Subsection (5)(a), take and pass the state component of the licensing examination;

(f) pursuant to Subsection (5)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the required prelicensing education;

(ii) a report of the examination showing a passing score for the state component of the examination; and

(iii) the applicant's business, home, and email addresses;

(g) provide from each state where licensed:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against any license held by the applicant; 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.

(4)(a)(2)(a) If an individual applies under this section 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.

(5)(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 section falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(6)(4) A broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(7)(a)(i)(5)(a)(i) A person who holds or obtains a dual broker license 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 Sections R162-2f-401j, R162-2f-403a, and R162-2f-403b.

(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.

#### **R162-2f-202e. Procedure to Designate an Acting Principal Broker.**

(1) The division may inactivate the registration of a real estate brokerage if, upon the death or incapacity of its principal broker, the real estate brokerage fails to replace the principal broker within 14 days.

(2) The real estate business activities of an inactive brokerage may not continue and each licensee affiliated with the principal broker must stop any activity that requires a real estate license, until:

(a) the brokerage appoints another principal broker;

(b) the licensee affiliates with another principal broker; or

(c) an acting principal broker for the brokerage is qualified and designated.

(3) Before the death or incapacitation of a principal broker, a brokerage may identify in a written instrument signed by the owners of the brokerage an individual to become the acting principal broker to take effect when the principal broker dies or becomes incapacitated.

(a) If the designated acting principal broker is an associate broker within the brokerage, this individual will become the acting principal broker upon notifying the division.

(b) If the designated acting principal broker is not an associate broker within the brokerage, this individual will become the acting principal broker upon the approval of the commission.

(4) Following the death or incapacity of its principal broker, a real estate brokerage may, within 14 days:

(a) appoint another principal broker; or

- (b) designate an associate broker affiliated with the brokerage to act as the principal broker.
- (5) The commission, with the concurrence of the division, may designate an individual to act as principal broker giving preference to individuals in the following order:
  - (a) a licensee currently affiliated with the real estate brokerage;
  - (b) a licensee from another registered real estate brokerage;
  - (c) an attorney representing the real estate brokerage; or
  - (d) any other person designated by the commission.
- (6) An acting principal broker may close out those transactions, listings, purchase contracts, and property management agreements that are active or pending when an incident occurs that requires the designation of an acting principal broker.
- (7) An acting principal broker may not:
  - (a) agree to represent new clients; or
  - (b) continue the business activities of the brokerage for more than four months after the occurrence of the death or incapacity of the principal broker.
- (8) The acting principal broker shall:
  - (a) maintain or supervise each escrow or trust account until the money is transferred or disbursed as agreed;
  - (b) arrange for pending transactions to be closed; and
  - (c) notify in writing the following persons of the individual's designation as acting principal broker:
    - (i) each licensee affiliated with the deceased or incapacitated principal broker; and
    - (ii) each client and party to a pending real estate contract.

**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 before its being taught.
- (b) A licensee who completes a course that is not required to be certified pursuant to Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to 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 before 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 that will provide the course~~[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 materials to be distributed to participants;
  - (k) signed statement in which the course provider and each instructor:
    - (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) dates the course was taught;
      - (D) number of credit hours; and
      - (E) names and license numbers of each student 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 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.
- (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)(a) 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) The minimum length of a course shall be one credit hour.

(e) The procedure for taking attendance shall be more extensive than having the student sign a class roll.

(f) The completion certificate shall include 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) 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, agency agreements, and fiduciary duties;
- (v) short sales or sales of bank-owned property;
- (vi) environmental hazards;
- (vii) property management;
- (viii) prevention of real estate and mortgage fraud, including wire fraud;
- (ix) federal and state real estate laws;
- (x) fair housing, diversity, identifying bias, promoting equity, and inclusion;
- (xi) division administrative rules;
- (xii) broker trust accounts; [~~and~~]
- (xiii) water law, rights and transfer; and
- (xiv) multiple offers.

(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 taught in the course;
- (ii) obtain permission for licensees to subsequently use each form or contract 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 sub-agency;
  - (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) 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)(a) A continuing education course certification expires 24 months after the date of issuance [~~from the date of issuance~~] and must be renewed before the expiration date 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 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 requirements for a timely renewal; and
  - (ii) pay a nonrefundable 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 [sub]section 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 Section 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) before assigning 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 governing real estate auctions, as outlined in Section R162-2f-401i;
      - (g) strictly adhere to the rule 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 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; and



(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;

(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 can 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 to discuss or resolve complaints and disputes that may arise during a real estate transaction involving the broker or affiliated licensee~~[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 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) 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 neither a principal broker nor a branch broker shall be deemed in violation of failing to exercise active and reasonable supervision ~~if~~where:

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

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

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

(d) the broker did not participate in the violation;

(e) the broker did not ratify the violation; and

(f) the broker did not attempt to avoid learning of the violation.

#### **R162-2f-401f. Approved Forms.**

(1) The following standard forms are approved by the commission and the Office of the Attorney General for use by ~~[all]~~licensees:

(a) September 1, 2017, Real Estate Purchase Contract;

(b) ~~[January 1, 1987, Uniform Real Estate Contract;~~

~~(c) ]October 1, 1983, All Inclusive Trust Deed;~~

~~(d) [(d)]~~ October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

~~(e) [(e)]~~ January 1, 2020, Addendum to Real Estate Purchase Contract;

~~(f) [(f)]~~ October 20, 2021, Seller Financing Addendum to Real Estate Purchase Contract;

~~(g) [(g)]~~ January 1, 1999, Buyer Financial Information Sheet;

~~(h) [(h)]~~ January 1, 2021, FHA/VA Loan Addendum to Real Estate Purchase Contract;

~~(i) [(i)]~~ January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

~~(j) [(j)]~~ August 1, 2018, Lead-based Paint Addendum to Real Estate Purchase Contract;~~[-and]~~

(j)(4) August 1, 2018, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards; and  
 (k)(4) January 1, 2018, Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract.

**R162-2f-501. Appendices.**

(1) When submitting evidence of qualifying experience [~~which experience complies with the requirements in Section R162-2f-401a~~] as part of an application for licensure as a broker, an applicant shall select from the applicant's total qualifying experience at least 60 documented experience points and no more than 80 documented experience points for review and approval by the division.

(2) A minimum of 45 experience points of the required 60 experience points for qualification as a broker must comply fully with the requirements in Section R162-2f-401a. As provided for in Subsection R162-2f-202b(2), a broker applicant may receive partial experience points for up to 15 of the 60 required experience points if the applicant can successfully document from signed agency agreements or purchase contracts that the applicant created or confirmed their agency with the clients they represented. Partial experience points must be documented from the transactions originally submitted by applicant totaling the maximum of 80 experience points and approved by the division.

(3)(2) When calculating experience points in Table 1, experience points for a transaction subject to an agency agreement other than an exclusive brokerage agreement as defined in Subsection 61-2f-308(1)(d) are limited to one-quarter of the points described in Table 1.

(4)(3) When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with Section R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in Utah.

| TABLE 1<br>APPENDIX 1 - REAL ESTATE SALES<br>TRANSACTIONS<br>EXPERIENCE TABLE   |                           |
|---|---------------------------|
| RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate sales transaction: | Points that may be earned |
| (a) One-unit dwelling   | 2.5 points                |
| (b) Two- to four-unit dwellings   | 5 points                  |
| (c) Apartments, 5 units or over   | 10 points                 |
| (d) Improved lot  | 2 points                  |
| (e) Vacant land or subdivision  | 10 points                 |
| COMMERCIAL  | Points that may be earned |
| (f) Hotel or motel  | 10 points                 |
| (g) Industrial or warehouse   | 10 points                 |
| (h) Office building   | 10 points                 |
| (i) Retail building   | 10 points                 |

| TABLE 2<br>APPENDIX 2 - LEASING TRANSACTIONS AND<br>PROPERTY MANAGEMENT<br>EXPERIENCE TABLE |                                 |
|---|---------------------------------|
| RESIDENTIAL   | Points that may be earned       |
| (a) Each property management agreement  | 1 point per unit up to 5 points |
| (b) Each unit leased  | 1.25 points per unit            |
| (c) Other property management   | 0.25 points per month*          |
| COMMERCIAL -- hotel, motel, industrial,   | Points that may be earned       |

|   |  |
|---|--|
| warehouse, office, or retail building   |  |
| (a)(ii) Each property management agreement  | 1 point per unit up to 5 points                                    |
| (ii) Each unit leased   | 1.25 points per unit   |
| (b) Each Owner Agreement of 5 units+  | 5 points   |
| (ii) Each unit leased   | 1.25 pts < 2,000 sf<br>3 pts 2,001 -- 5,000 sf<br>5 pts > 5,000 sf |
| (e) Property management   | 1 pt/100,000 sf/month  |
| (f) Other property management   | 1 pt/100,000 sf/month*   |
| * When calculating experience points from Table 2, the total combined monthly experience credit claimed for "Other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker. |  |

| TABLE 3<br>APPENDIX 3 - OPTIONAL EXPERIENCE TABLE |                           |
|---|---------------------------|
|   | Points that may be earned |
| Real Estate Attorney                              | 1 pt/month                |
| CPA-Certified Public Accountant                   | 1 pt/month                |
| Mortgage Loan Officer                             | 1 pt/month                |
| Licensed Escrow Officer                           | 1 pt/month                |
| Licensed Title Agent                              | 1 pt/month                |
| Designated Appraiser                              | 1 pt/month                |
| Licensed General Contractor                       | 1 pt/month                |

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

**Date of Last Change: 2023[May 25, 2022]**

**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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