

Proposed Rule

R162-2i. Residential Property Management Licensing and Practices Rule.

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R162-2i-101. Title and Authority.

- (1) This rule is known as the “Residential Property Management Licensing and Practices Rule.”
- (2) This rule is made by the commission, with the concurrence of the division, under Subsection 61-2f-103(2)(a), and in particular Subsections 61-2f-103(2)(a)(i)(E), (ii)(D), (iii), (iv), (v), (vi), (vii), (viii), (ix), and (xii).
- (3) This rule implements Sections 61-2f-201, 61-2f-202.5, 61-2f-203, 61-2f-204, 61-2f-206, 61-2f-302, 61-2f-309, 61-2f-401, 61-2f-404, and 61-2f-411.
- (4) The authority to collect a fee is granted by Section 61-2f-105.

R162-2i-102. Definitions.

- (1) A term used in this rule that is defined in Section 61-2f-102, and not otherwise defined in this rule, has the meaning given in Section 61-2f-102.
- (2) “Active license” means a license granted to an applicant who:
 - (a) qualifies for licensure under Section 61-2f-203 and this rule;
 - (b) pays the applicable nonrefundable license fees; and
 - (c) complies with Section 61-2f-302 and Section R162-2i-302, if affiliation is required.
- (3) “Client” means a property owner on whose behalf an individual performs residential property management.
- (4) “Client funds” means money belonging to a client or to a tenant that comes into the possession or control of an individual engaged in residential property management, or of a property management company, and includes rent, a security deposit, prepaid rent, a reserve fund, and money tendered for the payment of an expense.
- (5) “Inactive license” means a license issued or renewed under this rule that may not be used to conduct activity for which a license is required under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.
- (6) “Online license management system” means the system the division uses to gather, store, index, and retrieve information related to licensing, registration, and certification.
- (7) “Residential property management” means property management, as defined in Subsection 61-2f-102(32), of one or more residential rental units.
- (8) “Support services” means an activity described in Subsection R162-2i-401g(2).

R162-2i-103. Scope and Application.

- (1) This rule governs:
 - (a) licensure as a property manager;
 - (b) designation of a principal property manager;
 - (c) registration of a property management company that engages in residential property management; and
 - (d) the conduct of an individual licensed, or required to be licensed, under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, while the individual is engaged in residential property management.
- (2) Sections R162-2i-401a through R162-2i-403 apply to a principal broker, an associate broker, a sales agent, a dual broker, a property manager, and a principal property manager alike, according to the conduct in which the individual is engaged and without regard to the type of license the individual holds.
- (3) Rule R162-2f governs:
 - (a) conduct in a transaction other than residential property management, including a sale, purchase, exchange, auction, or option, and including property management of real estate that is not a residential rental unit;
 - (b) licensure as a principal broker, associate broker, or sales agent; and
 - (c) certification and conduct of a school, course provider, a course, and an instructor, as applied by Section R162-2i-206.

(4) If a provision of this rule and a provision of Rule R162-2f each apply to the same conduct in residential property management, this rule governs.

(5) If a single property contains both one or more residential rental units and real estate that is not a residential rental unit, this rule governs a licensee's conduct as to the residential rental units, and Rule R162-2f governs the licensee's conduct as to the remainder of the property.

(6) This rule does not limit the authority of another state agency, including the authority of the Division of Consumer Protection under Title 13, Chapter 11, Utah Consumer Sales Practices Act.

(7) An individual licensed as a property manager may engage in residential property management only, as provided in Subsection 61-2f-201(4).

R162-2i-200. Exempt Individuals.

(1) For purposes of Subsection 61-2f-202.5(1), "owner or lessor" does not include a person described in Subsection 61-2f-202(1).

(2) For purposes of Subsection 61-2f-202.5(2), "immediate family member" means a property owner's parent, grandparent or grandchild, spouse, child or sibling, stepparent, stepchild, stepbrother, or stepsister.

(3) For purposes of Subsection 61-2f-202.5(3), an individual is an unlicensed remote assistant of a property manager only while the individual's activity is limited to an activity described in Subsection R162-2i-401g(2).

(4) For purposes of Subsection 61-2f-202(2)(a)(vi), "support services" performed by a regular salaried employee of a licensed property management company or real estate brokerage means an activity described in Subsection R162-2i-401g(2) whether or not the property management performed by the employer is residential property management.

R162-2i-201. Qualification for Licensure – Property Manager.

(1) Under Subsection 61-2f-203(1), an applicant for a property manager license shall evidence honesty, integrity, truthfulness, reputation, and competency.

(2) An applicant may be denied a license, or issued a restricted license, for an incident in the applicant's past that reflects negatively on the applicant's honesty, integrity, truthfulness, reputation, or competency.

(3)(a) In evaluating an applicant for honesty, integrity, truthfulness, and reputation, the division and commission may consider:

(i) a criminal conviction, with particular consideration given to:

(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 A or class B 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) a plea agreement;

(iii) a past act related to honesty or truthfulness, with particular consideration given to an act involving the business of real estate or property management, that would be grounds under Utah law for sanctioning an existing license;

(iv) a civil judgment in a lawsuit brought on grounds of fraud, misrepresentation, or deceit;

(v) a court finding of fraudulent or deceitful activity;

(vi) evidence of noncompliance with a court order or a condition of sentencing; and

(vii) evidence of noncompliance with:

(A) the terms of a diversion agreement not yet closed and dismissed;

_____ (B) a probation agreement; or

_____ (C) a plea in abeyance.

_____ (b)(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, to submit a complete application, provide for the division's and commission's review current documentation from two licensed therapists stating that the applicant does not pose an ongoing threat to the public.

_____ (ii) For purposes of this rule, a crime that contains an element of violence or physical coercion is: assault, including domestic violence; rape; sex abuse of a child; sodomy on a child; battery; interruption of a communication device; vandalism; robbery; criminal trespass; breaking and entering; kidnapping; sexual solicitation or enticement; manslaughter; and homicide.

_____ (iii) The commission shall review information and documents submitted under this Subsection (3) and may exercise discretion in determining whether the applicant qualifies for licensure.

_____ (4) In evaluating an applicant for competency, the division and commission may consider evidence including:

_____ (a) a civil judgment, with particular consideration given to a judgment involving the business of real estate or property management;

_____ (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

_____ (c) suspension or revocation of a professional license;

_____ (d) a sanction placed on a professional license;

_____ (e) an investigation conducted by a regulatory agency;

_____ (f) a finding by a court or an administrative tribunal of noncompliance with Title 57, Chapter 21, Utah Fair Housing Act, the fair housing laws of another state, or federal fair housing laws; and

_____ (g) a finding by a court of noncompliance with Title 57, Chapter 22, Utah Fit Premises Act.

_____ (5) An applicant shall be at least 18 years of age.

_____ (6) There is no minimum general education requirement for licensure as a property manager. An applicant shall complete the preclicensing education required by Section R162-2i-206 unless the applicant qualifies for a waiver or an exemption under Section R162-2i-202.

R162-2i-202. Property Manager Licensing Fees and Procedures.

_____ (1) To obtain a Utah license to practice as a property manager, an individual who is not currently and actively licensed as a property manager in another state shall:

_____ (a) evidence honesty, integrity, truthfulness, reputation, and competency under Section R162-2i-201;

_____ (b)(i) successfully complete 24 hours of approved preclicensing education under Section R162-2i-206;

_____ (ii) evidence current membership in the Utah State Bar; or

_____ (iii) apply to the division for a 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 or property management education within the 12-month period before the date of application;

_____ (c)(i)(A) apply with a testing service designated by the division to sit for the licensing examination; and

_____ (B) pay a nonrefundable examination fee to the testing service; or

_____ (ii) apply to the division for a modification of the licensing examination requirement under Subsection 61-2f-203(1)(e)(iii);

_____ (d) pass the licensing examination;

_____ (e) submit to the division an application for licensure including:

_____ (i) documentation of successful completion of the required preclicensing education;

_____ (ii) a report of the examination showing a passing score; and

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

(f) comply with the criminal background check requirements of Subsection 61-2f-204(1)(d);
(g) if applying for an active license, affiliate with a principal broker if affiliation is required under Section 61-2f-302 and Section R162-2i-302; and

(h) pay the nonrefundable fees required for licensure, including any 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 property manager, an individual who is currently and actively licensed as a property manager in another state shall:

(a) comply with Subsections (1)(a) and (1)(c) through (1)(h);

(b)(i) successfully complete division-approved prelicensing education relating to Utah law and administrative rules;

(ii) evidence current membership in the Utah State Bar; or

(iii) apply to the division for a waiver of all or part of the education requirement by virtue of having been licensed in a state with substantially equivalent prelicensing education requirements; and

(c) provide, from each state in which the applicant is or has been 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.

(3) Under Subsection 61-2f-203(7), an individual holding an active principal broker, associate broker, or sales agent license may obtain a property manager license without completing the prelicensing education described in Section R162-2i-206 and without passing the licensing examination. The individual shall:

(a) submit to the division an application for licensure including the applicant's business, home, and email addresses;

(b) if applying for an active license, affiliate with a principal broker if affiliation is required under Section 61-2f-302 and Section R162-2i-302; and

(c) pay the nonrefundable fees required for licensure.

(4) The deadlines for property manager licensing are as follows:

(a) An individual shall pass the licensing examination within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted within 90 days of the date on which the individual achieves a passing score on the licensing examination.

(c) If a deadline in this section falls on a day when the division is closed for business, the deadline is extended to the next business day.

(5) Holding more than one license.

(a) An individual may hold an active property manager license and an active principal broker, associate broker, or sales agent license at the same time.

(b) An individual described in Subsection (5)(a) who engages in residential property management is governed by this rule, and the individual's conduct in residential property management is evaluated under this rule without regard to which license the individual considers the individual to be acting under.

(c) Subsection (5)(a) does not relieve an individual of the affiliation requirements of Section 61-2f-302, and does not limit the authority of a principal broker to restrict, by agreement, the activity of a licensee affiliated with that principal broker.

R162-2i-202a. Designation of a Principal Property Manager.

(1) A property management company registered with the division shall have a principal property manager designated with the division at all times.

(2) An individual designated as a principal property manager shall hold an active license as a property manager or as a principal broker, as required by Subsection 61-2f-102(31).

(3) A dual broker serves as the principal property manager of the property management company the dual broker supervises.

(4) A property management company shall report a change in its designated principal property manager under Section R162-2i-207.

(5)(a) A property management company shall designate a replacement within 30 days of a change in the designation of the principal property manager.

(b) The division may inactivate the registration of a property management company that fails to comply with Subsection (5)(a).

(c) A property management company remains responsible under Section 61-2f-404 for the conduct of each licensee and unlicensed staff member it employs during a period in which no principal property manager is designated.

(6) The registration of a property management company may be involuntarily inactivated upon expiration, suspension, revocation, inactivation, or termination of the license of the principal broker or principal property manager with whom the company is affiliated.

(7) If the division or commission orders that a principal property manager's license be suspended or revoked:

(a) the order shall state the effective date of the suspension or revocation; and

(b) before the effective date, the property management company shall designate a new principal property manager or affiliate with a principal broker, and shall provide written notice to each licensee it employs.

R162-2i-203. Inactivation and Activation.

(1) Inactivation.

(a) To voluntarily inactivate a property manager license, the holder shall submit a change form through the online license management system under Section R162-2i-207.

(b) The license of a property manager who is required to affiliate with a principal broker under Section 61-2f-302 is involuntarily inactivated upon:

(i) termination of the property manager's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the property manager is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the property manager's principal broker is affiliated.

(c) The license of a property manager is involuntarily inactivated if the division or commission orders the license suspended or revoked.

(2) Activation. To activate an inactive property manager license, the holder shall:

(a) submit a change form through the online license management system under Section R162-2i-207;

(b) submit proof of:

(i) having held an active license at the time of the last renewal;

(ii) having completed, within the two-year period preceding the date of the activation request, the continuing education required by Subsection R162-2i-204(2)(b) for a renewal; or

(iii) having passed the licensing examination within the six-month period before the date of the activation request;

(c) if affiliation is required under Section 61-2f-302, evidence affiliation with a principal broker; and

(d) pay a nonrefundable activation fee.

(3) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the licensee's next renewal.

R162-2i-204. License Renewal or Reinstatement.

(1)(a) A property manager license is valid for two years from the date of licensure.

(b) To renew on time without incurring a late fee, an applicant for renewal shall complete the required continuing education by the 15th day of the month of expiration, so that a provider has time to bank the hours before the license expires.

(c) An applicant for renewal shall complete the renewal through the online license management system by the license expiration date, unless the applicant's circumstances require a "yes" answer to a disclosure question, in which case the division may require a paper application.

(2) Qualification for renewal or reinstatement.

(a) Character and competency.

(i) An applicant for renewal or reinstatement shall evidence that the applicant maintains the character and competency required for initial licensure under Section R162-2i-201.

(ii) An applicant for renewal or reinstatement may not have, since the last date of licensure:

(A) a felony conviction; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency, related to activity requiring a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, unless the division explicitly considered the finding in a previous application.

(iii) An applicant for renewal or reinstatement shall comply with the criminal background check requirements of Subsection 61-2f-204(2)(f).

(b) Continuing education. To renew at the end of a renewal cycle, an actively licensed property manager shall:

(i) complete the hours of non-duplicative continuing education required under Section 61-2f-204 that is:

(A) certified by the division;

(B) drawn from the topics listed in Subsection R162-2i-206(5);

(C) inclusive of three hours for completion of the Mandatory Property Management Course; and

(D) taken during the previous license period; or

(ii) apply to the division, by the 15th day of the month of expiration, for a waiver of all or part of the required hours by virtue of having completed non-certified courses that were not required to be certified under Subsection R162-2f-206c(1)(a) and that meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, before the license expires, complete the online renewal and pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to the deadlines in Subsections 61-2f-204(2)(b) through 61-2f-204(2)(d), submit any form the division requires, including proof of the continuing education required by Subsection (2)(b), and pay a nonrefundable reinstatement fee.

R162-2i-205. Registration of a Property Management Company.

(1) A property manager or principal broker may not engage in residential property management through an entity, a D.B.A., or a separate property management company without first registering the entity, D.B.A., or separate property management company with the division under Section 61-2f-206.

(2) In addition to the requirements of Section 61-2f-206, an applicant for registration of a property management company shall:

(a) identify the individual who will serve as the company's principal property manager, and certify that the individual:

(i) holds an active license as a property manager or as a principal broker;

(ii) is authorized to use the name of the registrant; and

(iii) will exercise active and reasonable supervision under Section R162-2i-401c over each licensee and unlicensed staff member the company employs;

(b) identify the service address of the property management company, which may not be a post office box, and a mailing address, which may be a post office box;

(c) identify the location where records required by Section 61-2f-309 and Section R162-2i-401h will be kept; and

(d) identify the location and account number of:

- (i) each trust account in which the company will hold client funds; and
- (ii) each operating account the company uses.
- (3) Restrictions.
 - (a) The division may not register a property management company proposing to use a business name that:
 - (i) is likely to mislead the public into thinking the registrant is not a property management company or real estate brokerage;
 - (ii) closely resembles the name of another registrant of the division; or
 - (iii) the division determines might otherwise be confusing or misleading to the public.
 - (b) Approval of a business name does not grant the registrant a legal right to use or operate under that name.
 - (c) A registrant may not transfer its registration, and may not allow an unlicensed person to use the registration to perform work for which licensure is required.
 - (d) If a change in the structure of a registrant creates a separate and unique legal entity, D.B.A., or separate property management company, the property manager or principal broker shall obtain a unique registration.
 - (e) Dissolution or termination of a registered entity or D.B.A. terminates the registration.
- (4) Residential property management performed by a registrant, or by a licensee or unlicensed staff member the registrant employs or with whom the registrant is affiliated, shall be conducted under the registrant's name as shown on division records.
- (5) A property management company is not required to register a property it manages, to designate a principal property manager for an individual property, or to file a periodic list of the properties it manages.

R162-2i-206. Education

- (1) Prelicensing education.
 - (a) The division shall create and maintain a prelicensing education program for a property manager license that:
 - (i) requires at least 24 hours of instruction;
 - (ii) covers the subjects the division determines necessary; and
 - (iii) establishes the proportion of hours allocated to each subject.
 - (b) An hour means 50 minutes of instruction in each 60 minutes, and a student may not earn more than eight program hours per day.
 - (c) The program shall address, at a minimum:
 - (i) Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and this rule;
 - (ii) fiduciary duties owed to a property owner, and the affirmative duties and prohibited conduct in Sections R162-2i-401a and R162-2i-401b;
 - (iii) the written property management agreement required by Section R162-2i-401d;
 - (iv) rent and fee disclosure, including under Section 57-22-4 and the Federal Trade Commission Act, 15 U.S.C. Sec. 41 et seq;
 - (v) advertising under Section R162-2i-401f;
 - (vi) handling of client funds, trust accounts, and reconciliation under Section R162-2i-403;
 - (vii) Title 57, Chapter 22, Utah Fit Premises Act;
 - (viii) Title 57, Chapter 17, Residential Renters' Deposits;
 - (ix) Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer;
 - (x) Title 57, Chapter 21, Utah Fair Housing Act, and federal fair housing law;
 - (xi) recordkeeping under Section 61-2f-309 and Section R162-2i-401h; and
 - (xii) the boundary between licensed activity and support services under Section R162-2i-401g, and the exemptions in Section 61-2f-202.5.

(2) The licensing examination for a property manager license shall cover the topics in the prelicensing education program and shall match the proportion of questions for each topic to the proportion of hours the division designates, as required by Subsection 61-2f-203(1)(e)(iv).

(3) A prelicensing course for a property manager license shall be certified under Section R162-2f-206b, which applies to a property management prelicensing course as it applies to a real estate prelicensing course.

(4) Continuing education courses shall be certified under Section R162-2f-206c, except that Subsection (5) of this section supplies the qualifying topics for a course offered to satisfy the continuing education requirement of a property manager license.

(5) Approved topics for property management continuing education are:

(a) lease and rental agreement forms and contracts;

(b) ethics;

(c) agency, agency agreements, and fiduciary duties;

(d) environmental hazards;

(e) residential property management practices and procedures;

(f) prevention of fraud, including wire fraud;

(g) federal and state landlord and tenant law;

(h) fair housing, diversity, identifying bias, promoting equity, and inclusion;

(i) division administrative rules;

(j) trust accounts and the handling of client and tenant money;

(k) habitability and Title 57, Chapter 22, Utah Fit Premises Act;

(l) residential renters' deposits under Title 57, Chapter 17;

(m) eviction and Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer;

(n) disclosure of rent and fees;

(o) maintenance, repair, and vendor management;

(p) tenant screening and the criteria described in Subsection 57-22-4(3)(a)(iv); and

(q) any other topic that focuses on residential property management, or on landlord and tenant law and related industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety.

(6) A school, a course provider, and an instructor shall be certified and shall conduct themselves under Sections R162-2f-206a, R162-2f-206b, R162-2f-206c, R162-2f-206d, R162-2f-206e, R162-2f-401d, and R162-2f-401e, which apply to property management education as they apply to real estate education.

(7) A course certified under Subsection (5) may be taken by any licensee to satisfy a continuing education requirement, whether the licensee holds a property manager license or a real estate license.

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

(1) An individual licensed as a property manager shall report to the division:

(a) a change in the licensee's name;

(b) a change in the licensee's business, home, email, or mailing address; and

(c) if affiliation is required under Section 61-2f-302, a change in the licensee's affiliation with a principal broker.

(2) A registered property management company shall report to the division:

(a) a change in the company's name;

(b) a change in the company's designated principal property manager or affiliated principal broker;

(c) a change in corporate structure;

(d) dissolution of the entity;

(e) a change in the location where records are kept; and

(f) a change to any other information provided in the company's registration application.

(3) Notification procedures.

(a) To report a change in name, an individual shall submit a change form with supporting documentation such as a marriage certificate, divorce decree, court order, or driver license.

(b) To report a change in name, an entity shall obtain prior division approval of the new name and attach proof that the new name is registered with and approved by the Division of Corporations and Commercial Code.

(c) To report a change of address, a person shall enter the change into the online license management system.

(4) A change required to be reported under this section shall be reported within ten business days after the day on which the change takes effect.

(5) The division may require a notification submitted under this section to be accompanied by a nonrefundable change fee.

R162-2i-302. Affiliation with a Principal Broker.

(1) An individual licensed as a property manager who is engaged, as an employee or an independent contractor, to perform real estate-related services by or on behalf of a principal broker, associate broker, or sales agent shall affiliate with a principal broker before engaging in residential property management, as required by Subsection 61-2f-302(6).

(2) An individual described in Subsection (1) shall affiliate the individual's property manager license with:

(a) the same principal broker with whom the associate broker or sales agent for whom the property manager performs real estate-related services is affiliated; or

(b) the principal broker with whom the individual's employer, or the person with whom the individual contracts, is affiliated.

(3) Under Subsection 61-2f-302(8), an individual is not required to affiliate with a principal broker if the individual holds a property manager license and:

(a) is not subject to Subsection 61-2f-302(6);

(b) is employed by a property management company that managed at least 750 residential rental units in this state in any of the three previous calendar years; or

(c) is employed by a housing authority as defined in Section 35A-8-401.

(4) A property management company that relies on Subsection (3)(b) shall, upon request of the division, produce records sufficient to establish the number of residential rental units the company managed in this state in each of the three previous calendar years.

(5) A principal broker with whom a property manager is affiliated may limit by agreement the activity in which the property manager engages. A limitation imposed by a principal broker is enforceable as a matter of the affiliation agreement and does not alter the requirements of this rule.

R162-2i-401a. Affirmative Duties in Residential Property Management.

(1) An individual engaged in residential property management shall:

(a) uphold the following fiduciary duties in the course of representing a principal, whether directly or on behalf of an entity:

(i) loyalty, which obligates the licensee to place the best interests of the principal above any other interest, including the licensee's own;

(ii) obedience, which obligates the licensee to obey a lawful instruction from the principal;

(iii) full disclosure, which obligates the licensee to inform the principal of a material fact the licensee learns about the other party or the transaction;

(iv) confidentiality, which prohibits the licensee from disclosing without permission information given to the licensee by the principal that would likely weaken the principal's bargaining position if it were known, excepting a known material fact concerning a defect in the property or the client's ability to perform;

(v) reasonable care and diligence;

(vi) holding safe and accounting for money or property entrusted to the licensee; and

(vii) any additional duty created by the property management agreement;

(b) engage in residential property management only under a written property management agreement that complies with Section R162-2i-401d;

(c) before offering a residential rental unit for lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in marketing the unit;

(d) if a prospective renter of a residential rental unit requests additional time to review a lease, allow the prospective renter at least 48 hours after the day on which the licensee provides the lease before the licensee takes adverse action against the prospective renter on the ground that the prospective renter did not sign within the time the licensee allowed;

(e) provide a copy of a lease or rental agreement, signed by each party, to the client within 30 days after the day on which the client requests a copy of the agreement;

(f) before signing or initialing a document on behalf of a principal:

(i) obtain prior written authorization, executed by the principal, that specifically identifies the actions authorized;

(ii) retain a copy of the written authorization in the file;

(iii) sign as follows: "by (Licensee's Name), on behalf of Owner"; and

(iv) initial as follows: "by (Licensee's initials), on behalf of Owner";

(g) account for money belonging to a client or a renter, whether or not the licensee is required to maintain a trust account under Section 61-2f-411, and regardless of the account in which the money is held, by:

(i) maintaining a record of each receipt and each disbursement of money belonging to a client or a renter that identifies:

(A) the date of the receipt or disbursement;

(B) the client and the property to which the receipt or disbursement relates;

(C) the amount;

(D) the client ledger, renter ledger, or lease to which the licensee credited or charged the amount;

and

(E) for a disbursement, the person to whom the money was paid;

(ii) maintaining the records described in Subsection (1)(g)(i) so that the records may be produced in date sequence;

(iii) if the account in which the money is held is owned or controlled by the licensee or by the property management company or brokerage with which the licensee is affiliated:

(A) maintaining a current running balance for the account;

(B) reconciling the records of the account with the records of the bank or credit union at least monthly; and

(C) reconciling the records of the account with the balance attributable to each client and each renter whose money is held in the account, at least monthly;

(iv) if the money is held in an account that the property owner owns and controls:

(A) maintaining a record of each deposit the licensee makes to the account and each disbursement the licensee makes or directs from the account; and

(B) reconciling the records described in Subsection (1)(g)(iv)(A), at least monthly, with each account statement or transaction record the licensee receives or is able to access;

(v) providing the client a statement of account:

(A) at the interval stated in the property management agreement;

(B) within 30 days after the day on which the client requests a statement; and

(C) within 30 days after the day on which the property management agreement ends; and

(vi) upon request, making the records described in this Subsection (1)(g) available to the division for audit or investigation;

(h) timely inform the licensee's principal broker or principal property manager of a residential property management transaction in which the licensee is involved as agent or principal, or in which the licensee has received funds on behalf of the property management company or brokerage;

(i) if employing an unlicensed individual to provide assistance, adhere to Section R162-2i-401g;

(j) adhere to Section R162-2i-401f in advertising;

(k) when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days, as contemplated by Subsection 61-2f-401(18);

(l) within 30 days after the day on which a property management agreement terminates:

(i) deliver any money held for the property owner to the property owner, the property owner's designated agent, or another party designated in the agreement; and

(ii) transfer or deliver to the property owner or the owner's designee each document pertinent to the management of the property that relates to a current tenant; and

(m) upon request, and subject to Section 61-2f-309, transfer or deliver to the property owner or the owner's designee each document pertinent to the management of the property that relates to a former tenant.

(2) An individual licensed as a property manager shall, in addition to Subsection (1) immediately deliver money received in a residential property management transaction:

(a) to the principal property manager or other person the property management company designates, for deposit; or

(b) if the property manager is affiliated with a principal broker, to the principal broker for deposit.

(3) For purposes of Subsection (1)(g):

(a) A licensee may maintain the information described in Subsection (1)(g)(i) in more than one record or system, including by cross-reference from one record to another. A licensee complies with Subsection (1)(g)(i) if the licensee is able to assemble and produce that information for each receipt and each disbursement.

(b) Subsection (1)(g) does not prescribe the form, medium, software, or account structure a licensee uses to keep a record.

(c) The identification described in Subsection (1)(g)(i)(D) is the licensee's application of the money under the lease or the property management agreement. A licensee does not violate Subsection (1)(g)(i) by recording an application that differs from a payor's characterization of the payment.

(d) "Reconcile" means to compare two records, identify each difference between them, and document the reason for each difference. A licensee does not violate Subsection (1)(g)(iii) or Subsection (1)(g)(iv) because a reconciliation identifies a difference, if the licensee documents the difference and resolves it within 30 days after the day on which the licensee performs the reconciliation.

(e) A licensee shall notify the division within 30 days after the day on which the licensee determines that an account holding money belonging to a client or a renter is out of balance and that the licensee is unable to cure the imbalance within that period.

(f) The duties described in Subsection (1)(g)(iii) are performed by the principal property manager or principal broker of the entity that owns or controls the account. A licensee affiliated with that entity complies with Subsection (1)(g)(iii) by following the entity's procedures for recording and transmitting money and records.

(4) For purposes of Subsection (1)(d):

(a) A copy provided under Subsection (1)(d) is not an offer and does not bind the licensee, the property management company, the brokerage, or the property owner as to a term that depends on information the prospective renter has not provided or an option the prospective renter has not selected, including an optional service or amenity. A licensee may mark the copy to state that fact.

(b) A prospective renter waives the time described in Subsection (1)(d) by signing the lease.

(c) "Adverse action" means to reject the prospective renter's application or to withdraw an offer to lease to the prospective renter.

(d) A licensee provides a document under Subsection (1)(d) when the licensee delivers it to the prospective renter in person, sends it to an email address or telephone number the prospective renter provided, or makes it available through an online portal the prospective renter is able to access and notifies the prospective renter that it is available.

(e) Subsection (1)(d) does not limit a duty of a property owner under Section 57-22-4.

(5) The duties described in Subsection (1)(l) are performed by the principal property manager or principal broker of the entity that owns or controls the account and controls the documents. A licensee affiliated with that entity complies with Subsection (1)(l) by following the entity's procedures for recording and transmitting money and records.

R162-2i-401b. Prohibited Conduct in Residential Property Management.

(1) An individual engaged in residential property management may not:

(a) engage in a practice described in Section 61-2f-401 in a manner that:

(i) fails to conform with accepted standards of the residential property management industry;

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

(iii) violates a provision of Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or of this rule;

(b) require a party to acknowledge receipt of a final copy of a document prepared by the licensee before each party has signed a contract evidencing agreement to its terms;

(c) make a misrepresentation to the division in an application for licensure, in an application for renewal, or in an investigation;

(d) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction, or knowingly participate in a transaction in which the false device is used;

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

(f) advertise or offer to lease a residential rental unit without the written consent of the owner of the property;

(g) advertise or offer to lease a residential rental unit at a price lower than the price the owner has authorized, without the written consent of the owner;

(h) engage the services of a person on behalf of a property owner without informing and obtaining consent from the person obligated to pay for the services;

(i) assign, or attempt to assign, a property management agreement to another licensee, brokerage, or property management company without the property owner's express written consent;

(j) post, provide, or cause to be posted a review or other public statement concerning the licensee, the property management company, the brokerage, or a residential rental unit that the licensee knows or should know materially misrepresents, expressly or by implication:

(i) that the reviewer exists;

(ii) that the reviewer used or otherwise had experience with the licensee, the property management company, the brokerage, or the residential rental unit; or

(iii) the reviewer's experience with the licensee, the property management company, the brokerage, or the residential rental unit;

(k) pay or provide anything of value to a person in exchange for, or conditioned expressly or by implication on, the writing or creation of a review expressing a particular sentiment, whether positive or negative, regarding the licensee, the property management company, the brokerage, or a residential rental unit, except that a licensee may offer a gift, giveaway, or entry in a drawing to a person who writes a review if eligibility does not depend on the sentiment of the review;

(l) fail to comply with Title 57, Chapter 22, Utah Fit Premises Act, as evidenced by court findings; or

(m) fail to comply with Title 57, Chapter 21, Utah Fair Housing Act, or federal fair housing laws, as evidenced by court or administrative tribunal findings.

(2) A property management company or brokerage may not adopt or maintain a policy, procedure, or contract provision that requires or induces a licensee to violate this section.

R162-2i-401c. Duties of a Principal Property Manager and a Principal Broker in Residential Property Management.

(1) A principal property manager shall:

(a) strictly comply with the record retention and maintenance requirements of Section 61-2f-309 and Section R162-2i-401h;

(b) except as provided in Subsections 61-2f-411(4) and (5), within three business days after receiving money from a client or a tenant, deposit the money into a trust account maintained under Section R162-2i-403 or forward or deposit the money into an account maintained by the property owner;

(c) maintain at the principal business location of the property management company a complete record of consideration received or escrowed in residential property management;

(d) be personally responsible for deposits held in the property management company's trust account; and

(e) exercise active and reasonable supervision over the conduct of each licensee and unlicensed staff member employed by the property management company for which the individual is the principal property manager.

(2) A principal broker whose brokerage engages in residential property management shall comply with Subsection (1) with respect to that activity, in addition to the duties imposed by Section R162-2f-401c.

(3) Active and reasonable supervision includes:

(a) establishing written policies, rules, and procedures, and systems that allow the principal property manager or principal broker to review, oversee, inspect, and manage:

(i) residential property management performed by a licensee employed by or affiliated with the supervisor;

(ii) documents that may have a material effect on the rights or obligations of a party to a transaction;

(iii) the filing, storage, and maintenance of those documents;

(iv) the handling of client funds, including the reconciliation required by Subsection R162-2i-401a(1)(f);

(v) advertising of any service for which a license is required;

(vi) familiarizing licensees with the requirements of federal and state law governing residential property management, including prohibitions against discrimination and the requirements of Title 57, Chapter 22, Utah Fit Premises Act, and Title 57, Chapter 17, Residential Renters' Deposits;

(vii) ensuring that each person conducting licensed activity on behalf of the property management company or brokerage holds an active license; and

(viii) ensuring that each licensee can maintain reasonable and timely communication with the supervisor or a competent designee;

(b) maintaining adequate, reasonable, and regular contact with each licensee engaged in residential property management, so as to prevent or curtail a practice that would violate this rule;

(c) being reasonably available to the public to discuss or resolve a complaint or dispute arising during a transaction involving the supervisor, an affiliated licensee, or a licensee the property management company employs;

(d) providing guidance to, and instruction and oversight of, each licensee and unlicensed staff member regarding the policies, rules, procedures, and systems of the property management company or brokerage;

(e) documenting the instruction and oversight provided under Subsection (3)(d); and

(f) establishing a system for monitoring compliance by licensees and unlicensed staff members.

(4) A principal property manager or principal broker may use a licensee or an unlicensed staff member to assist in administering Subsection (3), but may not relinquish overall responsibility for active and reasonable supervision.

(5) In establishing policies, rules, procedures, and systems, a principal property manager shall consider the number of property managers supervised and the number and location of the properties the property management company manages.

(6) A principal property manager or principal broker is responsible for a violation of Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or of this rule, by a licensee or unlicensed staff member the individual supervises, except that the individual is not in violation of the duty to exercise active and reasonable supervision if:

(a) the individual, or the property management company or brokerage, had in place when the violation occurred specific written policies or instructions to prevent the violation;

(b) reasonable procedures were established to ensure that licensees receive active and reasonable supervision, and the individual followed those procedures;

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

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

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

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

R162-2i-401d. Written Property Management Agreement.

(1) An individual may engage in residential property management for a property owner only under a written property management agreement, signed by the property owner or the owner's authorized representative and by the licensee, the property management company, or the brokerage.

(2) The agreement shall be executed before the licensee performs a service under it, except that a licensee may perform an emergency repair necessary to protect the property or the health or safety of an occupant before execution, if the licensee documents the circumstances and obtains a written agreement promptly afterward.

R162-2i-401e. Reserved.

Reserved.

R162-2i-401f. Requirements and Restrictions in Advertising a Residential Rental Unit.

(1) An advertisement of a residential rental unit shall identify the name of the property management company or brokerage as shown on division records. When it is not reasonable to identify that name in an electronic advertisement, the advertisement shall directly link to a display that clearly and conspicuously identifies it.

(2)(a) An advertisement of a residential rental unit is not required to disclose:

(i) that a licensee has an ownership interest in the unit; or

(ii) the agency relationship between a licensee and the owner of the unit.

(b) Subsection (2)(a) applies to any individual licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, without regard to the type of license the individual holds.

(c) Subsection (2)(a) does not apply to an advertisement offering a residential rental unit for sale, exchange, or auction.

(3) An advertisement of a residential rental unit shall provide a link to, or other means of contacting, a person from whom a prospective renter may obtain current information on rates and availability.

(4) An advertisement that remains posted after the advertised unit has been rented shall clearly and conspicuously disclose that the unit may or may not be available and shall provide the means of contact described in Subsection (3).

(5) A photograph, floor plan, or other depiction used in an advertisement shall accurately depict the residential rental unit advertised, or shall clearly and conspicuously identify itself as representative of a unit type rather than of the unit advertised.

R162-2i-401g. Unlicensed Assistants and Support Services.

(1) To employ an unlicensed individual to provide assistance in connection with residential property management, a licensee shall:

(a) obtain the permission of the licensee's principal property manager or principal broker before employing the individual; and

(b) supervise the individual to ensure that the individual's duties are limited to the activities listed in Subsection (2).

(2) An unlicensed individual may perform the following support services in connection with residential property management:

(a) clerical duties, including making an appointment for a prospective renter to meet with a licensee;

(b) acting as a courier in delivering documents, picking up keys, or providing a similar service, so long as the individual does not discuss or complete a form or document;

(c) placing signs at a property;

(d) having keys made;

(e) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;

(f) providing a prospective tenant access to a residential rental unit;

(g) providing secretarial, bookkeeping, accounting, maintenance, or repair services;

(h) quoting rent and lease terms as established or approved by the principal property manager or principal broker;

(i) completing a pre-printed lease or rental agreement, except as to a term that may be determined through negotiation of the principals;

(j) serving or receiving a legal notice;

(k) addressing a tenant or neighbor complaint; and

(l) inspecting a unit.

(3) An unlicensed individual may not:

(a) sign a lease agreement or an addendum with a tenant;

(b) negotiate a term of a lease or rental agreement;

(c) advertise, offer, attempt, or otherwise hold the individual out as engaged in property management;

(d) show a residential rental unit to a prospective renter for the purpose of securing a rental, other than providing access under Subsection (2)(f); or

(e) perform any other activity described in Subsection 61-2f-102(32)(a).

(4) Whether an individual is required to be licensed is determined by the activity the individual performs, not by the individual's job title or by the individual's designation as an assistant.

R162-2i-401h. Recordkeeping.

(1) In addition to complying with Section 61-2f-309, an individual engaged in residential property management, and the property management company or brokerage through which the individual acts, shall maintain and safeguard:

(a) each property management agreement and each amendment to it;

(b) each lease or rental agreement and each addendum to it;

(c) each written authorization obtained under Subsection R162-2i-401a(1)(f);

(d) each record of client funds required by Subsection R162-2i-401a(1)(g), including each reconciliation; and

(e) records sufficient to establish the content of an advertisement of a residential rental unit and the period during which it was posted.

(2) A record identified in Subsection (1) shall be maintained for at least three calendar years after the year in which the lease agreement commences or the term of the property management agreement ends, as provided in Subsection 61-2f-309(2)(b).

(3) A record may be maintained physically at the registered business location or electronically in a storage system that complies with Title 46, Chapter 4, Uniform Electronic Transactions Act.

(4) Upon request of the division, a record identified in Subsection (1) shall be made available for inspection and copying.

R162-2i-401i. Gifts, Inducements, Referral Fees, and Leasing Bonuses.

(1) An inducement or gift offered or given in connection with residential property management, including an inducement or gift offered to a prospective client or a prospective renter, is permissible and is not an illegal sharing of commission.

(2) A gift given upon the execution, renewal, or extension of a lease or rental agreement is permissible and is not an illegal sharing of commission.

(3) As provided in Subsections 61-2f-411(2)(b) and (c), an individual engaged in residential property management may pay a finder's fee, a leasing bonus, or other valuable consideration to any unlicensed person, including a client, a renter, a former renter, or an employee, for referring a prospective client, and may accept a referral fee from an individual whether licensed or unlicensed.

(4)(a) For purposes of Subsection (3) and Subsection 61-2f-411(2)(b), "prospective client" includes:

(i) a prospective renter; and

(ii) an existing renter who renews or extends a lease.

(b) Subsection (3) does not permit an unlicensed person to engage in an activity for which a license is required under Section 61-2f-201.

R162-2i-401j. Protection of Personal Information.

(1) As used in this section, "breach of system security," "personal information," and "record" mean the same as those terms are defined in Section 13-44-102.

(2) To the extent Title 13, Chapter 44, Protection of Personal Information Act, applies to the person, an individual engaged in residential property management, a property management company, and a brokerage shall comply with Section 13-44-201 and Section 13-44-202 with respect to the personal information of a client, a renter, a prospective renter, or an owner of a residential rental unit.

(3) An individual engaged in residential property management may not take or omit an action that causes a property management company or a brokerage to fail to comply with Section 13-44-201 or Section 13-44-202.

(4) A principal broker, a branch broker, and a principal property manager shall include, within the supervision required under Subsection 61-2f-401(13), reasonable procedures for the handling, storage, and destruction of a record containing personal information by the licensed and unlicensed staff the individual supervises.

(5)(a) Section 61-2f-309 governs the period for which a record is retained.

(b) An individual engaged in residential property management, a property management company, and a brokerage shall destroy a record containing personal information that the person is not required to retain under Section 61-2f-309, Subsection (5)(c), or another applicable law, by a method described in Subsection 13-44-201(2).

(c) An individual engaged in residential property management, a property management company, and a brokerage shall retain a rental application, and each document submitted in support of the rental application, of a prospective renter whose application is denied or withdrawn until the later of:

(i) the end of the third calendar year after the year in which the application is denied or withdrawn; or

(ii) the final resolution of a complaint, investigation, or legal action concerning the application, if the individual, property management company, or brokerage receives notice of the complaint, investigation, or legal action before the period described in Subsection (5)(c)(i) ends.

(6) This section does not:

(a) impose a duty on a person to whom Title 13, Chapter 44, Protection of Personal Information Act, does not apply;

(b) enlarge, narrow, or otherwise modify a duty imposed by Title 13, Chapter 44, Protection of Personal Information Act;

(c) limit the authority of the attorney general under Section 13-44-301; or

(d) create a private right of action.

R162-2i-403. Handling of Client Funds and Trust Accounts.

(1) Except as provided in Subsections (2) and (3), and as required by Subsection 61-2f-411(3), an individual engaged in residential property management shall associate with at least one trust account in a bank or credit union located within the state.

(2) As provided in Subsection 61-2f-411(4), a property manager is not required to maintain client funds in a trust account if:

(a) the property owner agrees in the property management agreement that the property manager is not required to hold property management client funds in a trust account; and

(b) a lease agreement states that the property manager is not required to hold property management client funds in a trust account.

(3) As required by Subsection 61-2f-411(5), and except as provided in Subsection (5)(b), a property manager who is affiliated with a principal broker shall keep client funds in the principal broker's trust account, in accordance with Section R162-2f-403b and the requirements the principal broker establishes. Subsection (2) does not apply to a property manager affiliated with a principal broker.

(4) A licensee who is not required to maintain a trust account under Subsection (2) remains subject to Subsection R162-2i-401a(1)(g).

(5)(a) A licensee or a property management company may not hold client funds in an account held in the name of the licensee or of the property management company unless that account is a trust account maintained under this section.

(b) Consistent with Subsection 61-2f-411(3)(b), a property management agreement may provide that client funds are paid directly into an account that the property owner owns and controls. Client funds paid into that account are not required to be held in a trust account under this section, whether or not the licensee has authority to deposit into or disburse from the account.

(c) A licensee who deposits client funds into, or disburses client funds from, an account described in Subsection (5)(b) shall account for the funds as required by Subsection R162-2i-401a(1)(g)(iv), and Subsection R162-2i-401a(2) does not apply to a deposit the licensee makes into that account.

(6) Unless otherwise modified by the property management agreement, as provided in Subsection 61-2f-411(3)(b), a trust account maintained under this section shall be used for the purpose of securing:

(a) tenant security deposits;

(b) rent;

(c) money tendered by a property owner as a reserve fund or for payment of an unexpected expense; and

(d) any other purpose the commission designates.

(7)(a) A trust account in which client funds are held for residential property management, including a principal broker's trust account described in Subsection (3), shall be non-interest bearing unless the parties to the property management agreement comply with Subsection 61-2f-411(3)(c).

(b) Subsection R162-2f-403b(2) does not apply to a trust account described in Subsection (7)(a).

(8) Section R162-2f-403b applies to a trust account maintained under this section, including its requirements for:

(a) records of deposits;

(b) the contents of an instrument by which funds are disbursed;

(c) voided instruments;

(d) competing claims to funds and the interpleader and mediation options;

(e) remittance of undisbursed funds to the State Treasurer as unclaimed property;

- _____ (f) reconciliation;
- _____ (g) notification of an out-of-balance account;
- _____ (h) deposit of the licensee's own funds and the limits on doing so;
- _____ (i) permitted disbursements; and
- _____ (j) transfer of an earned management fee into an operating account before further disbursement.
- _____ (9) Money received in connection with the rental of a tourist accommodation for a period of less than 30 consecutive days may not be deposited into a trust account maintained under this section.
- _____ (10) Within ten business days after establishing a trust account under this section, or after the account is moved to another bank or credit union or the account number changes, a licensee shall notify the division in writing of the account number, the address of the bank or credit union, and the type of activity for which the account is used.
- _____ (11) A trust account does not fail to comply with Subsection (1) because the bank or credit union at which the account is held places funds deposited in the account with one or more other federally insured depository institutions, through a deposit placement or sweep arrangement, to increase the deposit insurance available to the funds, if:
 - _____ (a) the licensee deposits all client funds into, and disburses all client funds from, the trust account;
 - _____ (b) the records of the bank or credit union at which the trust account is held identify the funds as held in trust for the licensee's clients;
 - _____ (c) the licensee is able to obtain the full balance of the funds through the trust account; and
 - _____ (d) the trust account complies with Subsection (7) as to any interest the funds earn.
- _____ (12) Subsection (10) applies to the trust account described in Subsection (11) and not to an account at another depository institution in which funds are placed through an arrangement described in Subsection (11).

R162-2i-501. Enforcement.

_____ A violation of this rule is subject to sanction under Section 61-2f-404 and to Section R162-2f-407, which governs administrative proceedings.

R162-2i-502. Reserved.

_____ Reserved.