

Proposed Rule Amendments

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

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

R162-2f-101. Title and Authority.

- (1) This ~~chapter~~ rule is known as the "Real Estate Licensing and Practices Rules."
- (2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.
- (3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.
- (4) The authority to collect fees is granted by Section 61-2f-105.
- (5) This rule does not govern the licensing of a property manager, the designation of a principal property manager, the registration of a property management company that engages in residential property management, or the conduct of an individual who is engaged in residential property management. Rule R162-2i governs those subjects, as provided in Section R162-2i-103.

R162-2f-102. Definitions.

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- (27) "Online license management system" means the system the division uses to gather, store, index, and retrieve information related to licensing, registration, and certification.
- ~~(27)~~(28) "Principal brokerage" means the main real estate or property management office of a principal broker.
- ~~(28)~~(29) "Principal" in a transaction means an individual who is represented by a licensee and may be:
- (a) the buyer or lessee;
 - (b) an individual having an ownership interest in the property;
 - (c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or
 - (d) an individual who is an officer, director, partner, member, manager, or employee of the entity that is the buyer, seller, lessor, or lessee.
- ~~(29)~~(30) "Provider" means an individual or business that is approved by the division to offer continuing education.
- ~~(30)~~(31) "Property management" is defined in Section 61-2f-102.
- ~~(31)~~(32) "Registration" means authorization from the division to engage in the business of real estate as:
- (a) a corporation;
 - (b) a partnership;
 - (c) a limited liability company;
 - (d) an association;
 - (e) a dba;
 - (f) a professional corporation;
 - (g) a sole proprietorship; or
 - (h) another legal entity of a real estate brokerage.
- ~~(32)~~(33) "Reinstatement" is defined in Section 61-2f-102.
- ~~(33)~~(34) "Reissuance" is defined in Section 61-2f-102.
- ~~(34) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.]~~
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R162-2f-201. Qualification for Licensure.

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

- (a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
- (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
- (c) suspension or revocation of a professional license;
- (d) sanctions placed on a professional license; ~~[and]~~
- (e) investigations conducted by regulatory agencies;
- (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.

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R162-2f-202d. ~~[Property Management Sales Agent Licensing Fees and Procedures]~~Reserved.

~~[(1) A sales agent affiliated with a dual broker through a property management company may act as a property management sales agent if:~~

- ~~(a) the dual broker designates the sales agent as a property management sales agent, and~~
- ~~(b) the sales agent pays to the division the property management sales agent designation fee.~~

~~(2) A property management sales agent may simultaneously provide both property management services and real estate sales services under the supervision of the dual broker if the property management sales agent:~~

- ~~(a) provides property management services only through the property management company overseen by the dual broker, and~~
- ~~(b) provides real estate sales services only through the real estate brokerage overseen by the dual broker.]~~

Reserved.

R162-2f-203. Inactivation and Activation.

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through ~~[RELMS]~~the online license management system pursuant to Section R162-2f-207.

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(b) To voluntarily inactivate a principal broker license, the principal broker shall:

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(ii) complete and submit a change form through ~~[RELMS]~~the online license management system pursuant to Section R162-2f-207.

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(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

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

(ii) before the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through ~~[RELMS]~~the online license management system to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through ~~[RELMS]~~the online license management system pursuant to Section R162-2f-207;

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

(1)

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(c) An individual who is required to submit a renewal application through the online [RELMS]license management system shall complete the online process, including the completion and banking of continuing education credits, in the [licensee's individual password protected RELMS account]online license management system, by the license expiration date.

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(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, before the expiration of the license:

(i) complete the online renewal of the license in the [applicant's password protected RELMS account]online license management system; and

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(4) An individual licensee shall submit an application for renewal through the online [RELMS]license management system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration Required.

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

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

(b) a branch office;

(c) an [assumed name]D.B.A.; or

(d) a separate property management company;

without first registering the entity, branch office, [assumed name]D.B.A., or separate property management company with the division.

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(3) To register with the division, a principal broker shall:

(a) evidence that the name of the registrant is registered with the Division of Corporations;

(b) certify that the registrant is affiliated with a principal broker or, if the registrant is a property management company, with a principal broker or a principal property manager, who:

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

(ii) will actively supervise the activities of each sales agent, associate broker, branch broker, property manager, and unlicensed staff member;

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~~[(6) The division may not bring an action for enforcement of this section after the expiration of four years following the occurrence of the violation.]~~ [(6) Registration of a property management company that engages in residential property management is governed by Section R162-2i-205, and Subsection (3) of this section applies to that registration as modified by this section.]

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

(1) To certify a prelicensing 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) a comprehensive course outline including:

(i) a description of the course, including a statement of whether the course is designed for:

(A) sales agents; ~~[or]~~

(B) brokers; or

(C) property managers;

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(5) This section applies to a prelicensing course for a property manager license as it applies to a prelicensing course for a sales agent or broker license, except that the course shall address the content

required by Subsection R162-2i-206(1)(c) and shall meet the hourly requirement of Subsection 61-2f-203(1)(d)(iv).

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

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(6) Certification procedures.

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(h) A course offered to satisfy the continuing education requirement of a property manager license shall be drawn from the topics listed in Subsection R162-2i-206(5). A course certified under Subsection R162-2i-206(5) may also be taken by a sales agent, associate broker, or principal broker to satisfy a continuing education requirement under Section R162-2f-204.

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

(3) Notification procedures.

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(b) To report a change in address, a person shall enter the change into ~~[RELMS]~~the online license management system.

(c) Affiliation.

(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through ~~[RELMS]~~the online license management system to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a company or branch change form to inactivate the entity registration;

(III) submit change forms through ~~[RELMS]~~the online license management system to inactivate the license of any licensee affiliated with the entity;

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

An individual licensee engaged in residential property management shall comply with Rule R162-2i as to that conduct.

An individual licensee shall:

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(2) define the scope of the individual's agency by executing a written agency agreement between the individual and the individual's principal, including:

(a) sellers the individual represents;

(b) buyers the individual represents;

(c) buyers and sellers the individual represents as a limited agent in the same transaction pursuant to Subsection (4); ~~[and (d) the owner of a property for which the individual will provide property management services; and~~

~~—— (e) a tenant whom the individual represents;]~~

(d) the owner of a property for which the individual will provide property management services other than residential property management; and

(e) a tenant whom the individual represents in a lease of real estate that is not a residential rental unit;

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(6) Except as provided in Section R162-2i-401f, before the execution of a binding purchase or lease agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

(c) the licensee's agency relationships; and

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

.....

(11) when executing a lease or rental agreement for real estate that is not a residential rental unit, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

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(20) before signing or initialing a document on behalf of a principal in a property management transaction that is not residential property management:

(a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;

(b) retain in the file for the transaction a copy of the written authorization;

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

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

(21) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to Section R162-2f-401g, or, in connection with residential property management, Section R162-2i-401g;

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

(1) An individual licensee may not:

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

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

~~_____ (ii) as to a property management transaction, a licensee may compensate an unlicensed employee or previous or current tenant up to \$250 per lease for assistance in retaining an existing tenant or securing a new tenant; (ii) a payment in connection with residential property management is governed by Section R162-2i-401i; and~~

~~_____ (iii) as to a property management transaction that is not residential property management, a licensee may compensate an unlicensed employee or a previous or current tenant up to \$250 per lease for assistance in retaining an existing tenant or securing a new tenant;~~

.....

~~[(2) The division may not bring an action for enforcement of either Subsection (1)(g) or Subsection (1)(q) after the expiration of four years following the occurrence of the violation.](2) An~~

individual licensee engaged in residential property management is subject to Section R162-2i-401b as to that conduct.

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~~Section 61-2f-309;

.....

(7) A principal broker whose brokerage engages in residential property management shall, as to that activity, comply with Section R162-2i-401c in addition to this section.

R162-2f-401g. Use of [~~Personal~~]Unlicensed Assistants.

To employ an unlicensed individual to provide assistance in connection with a real estate transaction that is not residential property management, an individual licensee shall:

(1) obtain the permission of the licensee's principal broker before employing the individual;

.....

(5) Employment of an unlicensed individual to provide assistance in connection with residential property management is governed by Section R162-2i-401g.

(6)(a) An unlicensed individual employed by a real estate brokerage or a property management company may perform, in connection with property management that is not residential property management, the support services described in Subsection R162-2i-401g(2), subject to the restrictions in Subsection R162-2i-401g(3).

(b) For purposes of Subsection (6)(a), a reference in Subsection R162-2i-401g(2) or (3) to a residential rental unit, to a unit, or to a renter means, respectively, the real estate that is managed and a tenant or prospective tenant of that real estate.

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

(1) Except as provided in Section R162-2i-401f, except as provided for in Subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

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(3) A licensee is not required to identify the name of the brokerage with which the licensee is affiliated, or the property management company for which the licensee works, if:

(a) the licensee advertises a property not currently listed with the brokerage with which the licensee is affiliated or the property management company for which the licensee works;

(b) the licensee has an ownership interest in the property; and

(c) the advertisement identifies the name of the individual licensee as "owner-agent", ~~[or]~~ "owner-broker[-]", or "owner-property manager."

(4) Advertising of a residential rental unit for rent is governed by Section R162-2i-401f, and Subsections (1) through (3) of this section do not apply to that advertising.

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

(1) This section applies to property management that is not residential property management, including property management of the portion of a property that is not a residential rental unit. Residential property management is governed by Rule R162-2i.

~~[(4)]~~(2) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with

the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

~~[(2)](3)~~ In addition to fulfilling each duty related to supervision per Subsection 61-2f-401~~(12)~~(13), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, property manager, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of this rule, including Section R162-2f-401g~~;~~
~~including Subsection R162-2f-401j(3)]~~.

~~[(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:~~

- ~~—— (a) providing a prospective tenant with access to a rental unit;~~
- ~~—— (b) providing secretarial, bookkeeping, maintenance, or rent collection services;~~
- ~~—— (c) quoting rent and lease terms as established or approved by the principal broker;~~
- ~~—— (d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;~~
- ~~—— (e) serving or receiving legal notices;~~
- ~~—— (f) addressing tenant or neighbor complaints; and~~
- ~~—— (g) inspecting units.]~~

~~.....~~

R162-2f-401k. [Recordkeeping Requirements]Reserved.

~~[A principal broker shall:~~

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

- ~~—— (a) trust account records, including the monthly reconciliation of the trust account;~~
- ~~—— (b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;~~
- ~~—— (c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and~~
- ~~—— (d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection R162-2f-401c(1)(c);~~

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

- ~~—— (a)(i) physically:~~
 - ~~—— (A) at the principal business location designated by the principal broker on division records; or~~
 - ~~—— (B) where applicable, at a branch office as designated by the principal broker on division records; or~~

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

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

- ~~—— (i) an offer is rejected;~~
- ~~—— (ii) the transaction either closes or fails; or~~
- ~~—— (iii) in a lease transaction, the termination of the lease agreement;~~

~~—— (3) upon request of the division, make any record identified in Subsection (1) available for inspection and copying by the division;~~

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

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

- ~~—— (a) the filing; and~~
- ~~—— (b) the current location of brokerage records.]~~

Reserved.

R162-2f-403a. Trust Accounts – Real Estate Company.

.....
(2) A real estate trust account maintained by a principal broker shall be non-interest-bearing, unless:

(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account; and

(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale[;].

~~[(c) the person designated under Subsection (2)(b):~~

~~—— (i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and~~

~~—— (ii) operates exclusively to provide grants to affordable housing programs in Utah; and~~

~~—— (d) the affordable housing program that is the recipient of the grant under Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.]~~

.....
(20) A trust account does not fail to comply with Subsection (1)(a)(i) 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 (2) as to any interest the funds earn.

(21) Subsection (1)(b) applies to the trust account described in Subsection (20) and not to an account at another depository institution in which funds are placed through an arrangement described in Subsection (20).

R162-2f-403b. Trust Accounts – Property Management Company.

.....
(2) A property management trust account maintained by a principal broker shall be non-interest-bearing, unless:

(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account; and

(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the transaction[;].

~~[(c) the person designated under Subsection (2)(b):~~

~~—— (i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and~~

~~—— (ii) operates exclusively to provide grants to affordable housing programs in Utah; and~~

~~—— (d) the affordable housing program that is the recipient of the grant under Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.]~~

.....
(17) This section governs a property management trust account maintained by a principal broker. Section R162-2i-403 governs the handling of client funds in residential property management and applies this section to a trust account maintained under that section. An amendment to this section applies to a trust account maintained under Section R162-2i-403 unless Section R162-2i-403 provides otherwise.

(18) A trust account does not fail to comply with Subsection (1)(a)(i) 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 (2) as to any interest the funds earn.

(19) Subsection (1)(b) applies to the trust account described in Subsection (18) and not to an account at another depository institution in which funds are placed through an arrangement described in Subsection (18).