

**R162. Commerce, Real Estate.**

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

**R162-2f-202b. Principal Broker Licensing Fees and Procedures.**

(1) To obtain a Utah license to practice as a principal broker, an individual shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c) (i) successfully complete 120 hours of approved prelicensing education, including:

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period prior to the date of application;

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

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

(e) pursuant to this Subsection (3) (a), take and pass both the state and national components of the licensing examination;

(f) (i) unless Subsection (2) (a) applies, evidence the individual's having, within the five-year period preceding the date of application either: [a minimum of three years experience related to real estate, including the following:

~~— (A) at least two years full-time licensed, active experience selling, listing, or managing the property types identified in Appendix 1; and~~

~~— (B) up to one year full-time professional experience related to real estate, as outlined in Appendix 3]~~

(A) three years full-time, licensed, active real estate experience; or

(B) two years full-time, licensed, active, real estate experience and one year full-time professional real estate experience from the optional experience table in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 documented experience points complying with R162-2f-401a, as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2, of which a maximum of 25 points may have been accumulated from the "All other property management" subsections of Appendix 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3; and

(iii) a minimum of one-half of the experience points from Tables 1 and 2 must derive from transactions of properties located in the state of Utah;

(iii) 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/or lease contracts and the applicable experience points will be divided proportionally among the licensees identified in the agency agreements and and/or lease contracts;

(g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

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

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

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

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

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

(k) establish real estate and property management trust accounts, as applicable pursuant to Section R162-2f-403, that:

(i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and

(ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and

(l) identify the location(s) where brokerage records will be kept.

(2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal 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 this Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be

extended to the next business day.

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

(5) Dual broker licenses.

(a) (i) A person who holds or obtains a dual broker license under this Subsection may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c;

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:

(i) at the broker's request, convert the dual broker license to a principal broker license; and

(ii) (A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

(c) As of May 8, 2013:

(i) the Division shall:

(A) cease issuing property management principal broker (PMPB) licenses;

(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;

(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and

(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and

(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to this Subsection (5) (c) (i) (C).

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

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

- (ii) the transaction;
- (d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:
  - (i) a defect in the property; or
  - (ii) the client's ability to perform on the contract;
- (e) reasonable care and diligence;
- (f) holding safe and accounting for all money or property entrusted to the agent; and
- (g) any additional duties created by the agency agreement;
- (2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:
  - (a) seller(s) the individual represents;
  - (b) buyer(s) the individual represents;
  - (c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);
  - (d) the owner of a property for which the individual will provide property management services; and
  - (e) a tenant whom the individual represents;
- (3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:
  - (a) clearly explaining in writing to both parties:
    - (i) that each is entitled to be represented by a separate agent;
    - (ii) the type(s) of information that will be held confidential;
    - (iii) the type(s) of information that will be disclosed; and
    - (iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;
  - (b) obtaining a written acknowledgment from each party affirming that the party waives the right to:
    - (i) undivided loyalty;
    - (ii) absolute confidentiality; and
    - (iii) full disclosure from the licensee; and
  - (c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;
- (4) when acting under a limited agency agreement:
  - (a) act as a neutral third party; and
  - (b) uphold the following fiduciary duties to both parties:
    - (i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;
    - (ii) reasonable care and diligence;
    - (iii) holding safe all money or property entrusted to the limited agent; and
    - (iv) any additional duties created by the agency agreement;
- (5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:
  - (a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy,

sell, lease, or rent real property;

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

(c) the licensee's agency relationship(s);

(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;

(6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;

(7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:

(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and

(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;

(8) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(10) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(11) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:

(a) obtain authorization from the licensee's principal broker to offer the inducement;

(b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and

(c) provide notice of the inducement, using any method or form, to:

(i) the principal broker of the seller's agent, if the seller paying a commission is represented; or

(ii) the seller, if the seller paying a commission is not represented;

(12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

- (i) consenting to the sub-agency; and
- (ii) defining the scope of the agency;
- (c) obtain from the listing brokerage all available information about the property; and
- (d) uphold the same fiduciary duties outlined in this Subsection (1);

(13) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(14) (a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

- (i) the principal broker's individual name; or
- (ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

- (a) the licensee is involved as agent or principal;
- (b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(16) (a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(17) (a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306; [involving a property for which a certificate of occupancy has been issued, use:

~~(i) (A) the standard forms approved by the commission and identified in Section R162-2f-401f;~~

~~(B) standard supplementary clauses approved by the commission; and~~

~~(C) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;~~

~~(ii) forms prepared by an attorney for a party to the transaction, if:~~

~~(A) a party to the transaction requests the use of the attorney-drafted forms; and~~

~~(B) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or~~

~~(iii) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:~~

~~(A) the principal; or~~

~~(B) an entity in the business of selling blank legal forms; and~~

~~(b) in presenting an offer on a property for which a certificate of occupancy has not been issued, use any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:~~

~~(i) the principal; or~~

~~(ii) an entity in the business of selling blank forms.]~~

(18) use an approved addendum form to make a counteroffer or any other modification to a contract;

(19) in order to sign or initial a document on behalf of a principal in a sales transaction:

(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(20) in order to sign or initial a document on behalf of a principal in a property management transaction:

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

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

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

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

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

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

(23)~~+(22)~~ as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased;  
and

(d) the approximate net proceeds the seller may reasonably expect to receive;

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

(25)~~+(24)~~ as contemplated by Subsection [~~61-2f-401(18)~~] 61-2f-401(19), 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.

#### **R162-2f-401i. Standards for Real Estate Auctions.**

A principal broker who contracts or in any manner affiliates with an auctioneer or auction company to sell at auction real property in this state shall:

(1) ensure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable

to real estate licensees in real estate transactions;

(2) ensure that advertising and promotional materials associated with an auction name the principal broker;

(3) attend and supervise the auction;

(4) ensure that any purchase agreement used at the auction ~~is~~ ~~meets the requirements of Subsection R162-2f-401a(18); and~~ ~~is~~ completed by an individual holding an active Utah real estate license and is filled out in compliance with Section 61-2f-306;

(5) ensure that any money deposited at the auction is placed in trust pursuant to Subsection R162-2f-401c(1)(i); and

(6) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

#### **R162-2f-407. Administrative Proceedings.**

(1) ~~[Formal adjudicative proceedings.]~~ An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(2) ~~[Informal]~~ Other adjudicative proceedings.

(a) ~~[An]~~ All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be ~~[conducted as an informal adjudicative proceeding]~~ designated as either formal or informal in the division's notice of agency action or notice of proceeding, as applicable.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.

(3) Hearings required. A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); ~~[and]~~

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing;

(c) appealing a division order denying or restricting a license;  
and

(d) when an application presents unusual circumstances, such that the division determines that the application should be heard by the commission.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing.

Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

(i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and

(ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) Additional procedures for informal disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

(6) Formal adjudicative proceedings shall be conducted pursuant to the Administrative Procedures Act and the rules promulgated by the Department of Commerce.

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

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

TABLE 1

#### APPENDIX 1 - REAL ESTATE SALES TRANSACTIONS EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:

(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points

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(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
<del>(j) Leasing of commercial space</del>	<del>5 points</del>

TABLE 2

APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT EXPERIENCE  
TABLE

RESIDENTIAL

(a) Each master agreement of 5 units or more	5 points
(b) Each unit leased	1.25 points
<del>[-(a)-]</del> *(c) All other property management	<del>[Each unit managed]</del>
	0.25 pt/month

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building

(a) Each master agreement of 5 units or more	5 points
(b) Each unit leased	1.25 points
<del>[-(b)-]</del> *(c) All other property management	<del>[Each contract OR each separate property address or location for which licensee has direct responsibility]</del>
	1 pt/month

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

TABLE 3

APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month