



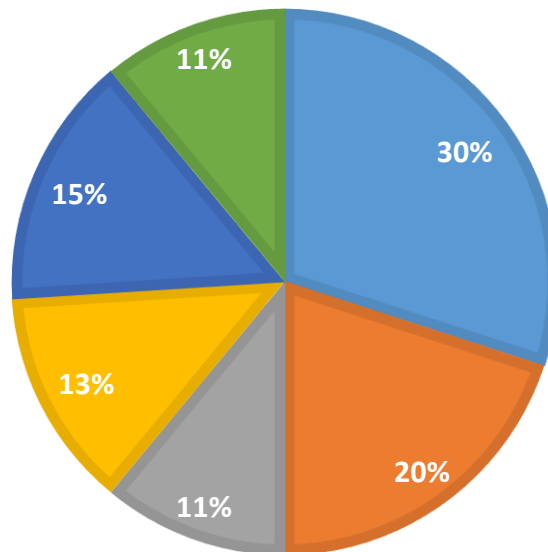
# LEGAL TIP OF THE WEEK

As licensees, we generally hear the terms “**statutes**” and “**administrative rules**,” but don’t understand what they mean or how they differ. Statutes generally are laws passed by the state legislature. Often, legislatures pass statutes that outline general guidelines, and then within that law authorize agencies, such as the UDRE, to nail down the specifics of process and enforcement. Laws created by agencies are called regulations, or in our case, administrative rules. Administrative Rules usually must be authorized by a statute, and are subordinate to statutes. However, they have the same legal force as statutes. Agencies like the UDRE are part of the executive branch of state and federal government, and thus are tasked with the execution of the law.

In today’s LEGAL TIP, we are going to look at the most violated state statutes, and examples of how licensees failed to uphold the law. Next week, we’ll take a close look at the most violated administration rules and address an upcoming **change to the continuing education requirements for ALL LICENSEES**.

## MOST VIOLATED LICENSEE STATUTES

- 61-2f-201      ■ 61-2f-401(1)    ■ 61-2f-401(4)
- 61-2f-401(7)   ■ 61-2f-401(13)   ■ 61-2f-401(17)



JANUARY 2017 – DECEMBER 2018

This is a Publication of the Cache Valley Association of REALTORS®

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## 61-2f-201 LICENSE REQUIRED

- (1) Unless a person is licensed under this chapter, it is unlawful for the person to do the following with respect to real estate located in this state:
- Engage in the business of a principal broker, associate broker, or sales agent;
  - Act in the capacity of a principal broker, associate broker, or sales agent;
  - Advertise or assume to act as a principal broker, associate broker or sales agent.

Two main examples were offered... the first being sales agents that fail to renew, but who continue to practice as licensee for days, weeks and even months beyond their expiration date. Another common example given was that brokers and branch brokers are failing to renew on time, which subsequently inactivates all licenses associated with their firm until resolved. This means no new listings, no closings, no showings (no real estate activities PERIOD), until the brokers satisfies the CE requirements necessary and is able to reinstate all sales agent licenses (including reinstatement fees \$\$\$).

## 61-2f-401 GROUNDS FOR DISCIPLINARY ACTION

The following acts are unlawful for a person licensed or required to be licensed under this chapter:

- (1)    a) making a substantial misrepresentation, including in a licensure statement;  
      b) making an intentional misrepresentation;

Licensees are failing to report misdemeanors (traffic violations) when renewing their licenses for fear they will end up in the quarterly UDRE newsletter. This is not correct. FAILURE TO REPORT is the violation, however, truthfully reporting a (example) traffic violation is not grounds for losing your license, nor will it be reported in the UDRE newsletter.

- (4)    a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;  
      b) commingling money described in Subsection 4)a) with the person's own money; or  
      c) diverting money described in Subsection 4)a) from the purpose for which they money is received;

Licensees are not depositing earnest money in the correct accounts, within the correct amount of time, as outlined in the Real Estate Purchase Contract.

- (7)    Being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public.

One example offered was that of an "offsite broker" not managing the wrongful conduct of a sales agent in his office. In addition, this broker did not have the policies in place to correct the behavior, and was equally liable for the agents wrongdoings.

- (13)   Advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

It is becoming more and more common for licensees to "forget" to take down their KSL listings after a property has sold. Agents are doing this in order to generate more buyer leads, however, it is a direct violation of UDRE statute and administrative rules. First offense carries \$150 fine, second \$500 fine and third offense will require a hearing before the Utah Real Estate Commission.

- (17)   Any other conduct which constitutes dishonest dealing.

It is becoming more and more common for the licensees to forge their clients signatures on contract addenda.