

Chapter 11 Utah Uniform Land Sales Practices Act

57-11-1 Short title.

This act shall be known and may be cited as the "Utah Uniform Land Sales Practices Act."

Amended by Chapter 73, 1987 General Session

57-11-2 Definitions.

As used in this chapter:

- (1)
 - (a) "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit.
 - (b) "Disposition" does not include the sale or lease of land held by railroads for right of way if the land is within 400 feet of the center line of a railroad tract.
- (2) "Division" means the Division of Real Estate created in Section 61-2-201.
- (3) "Federal act" means the federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. Sec. 1701, et seq., or any successor federal act.
- (4)
 - (a) "Industrial park" means a subdivision or subdivided lands offered as a part of a common promotional plan of advertising and sale zoned for office, manufacturing, warehousing, commercial, industrial, distribution, or wholesale use and utilized for one or more of those purposes.
 - (b) "Industrial park" does not include land offered for sale that is designed or intended to be used for recreational, residential, including multiple family dwellings, or agricultural purposes.
- (5) "Offer" includes an inducement, solicitation, or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit.
- (6) "Person" includes:
 - (a) a business trust;
 - (b) an estate;
 - (c) a trust;
 - (d) a partnership;
 - (e) an unincorporated association;
 - (f) two or more of any entity having a joint or common interest; or
 - (g) any other legal or commercial entity.
- (7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.
- (8) "Residential building" means a structure intended for occupation as a residence which, at the time of an offer or disposition of the unit on which it is situated, or on which there is a legal obligation on the part of the seller to complete construction of it within two years from date of disposition, has, or if completed would have, ready access to water, gas, electricity, and roads.
- (9) "Subdivider" means:
 - (a) an owner of an interest in subdivided lands who offers the subdivided lands for disposition; or
 - (b) a principal agent of an owner of an interest in subdivided lands if the owner is inactive.
- (10)
 - (a) "Subdivision" and "subdivided lands" means land that is divided or is proposed to be divided for the purpose of disposition into 10 or more units including land, whether contiguous or not,

if 10 or more units are offered as a part of a common promotional plan of advertising and sale.

- (b) If a subdivision is offered by a developer or group of developers, and the land is contiguous or is known, designated, or advertised as a common tract or by a common name, that land is presumed, without regard to the number of units covered by each individual offering, to be part of a common promotional plan.
- (11) "Unit" includes a lot, parcel, or other interest in land separately offered for disposition.

Amended by Chapter 379, 2010 General Session

57-11-3 Administration by division.

The division shall administer this chapter.

Amended by Chapter 352, 2009 General Session

57-11-3.5 Procedures -- Adjudicative proceedings.

The Division of Real Estate shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

57-11-4 Exemptions.

- (1) Unless the method of disposition is adopted for the purpose of evasion of this chapter or the federal act, this chapter does not apply to an offer or disposition of an interest in land:
- (a) by a purchaser of subdivided lands for the person's own account in a single or isolated transaction;
 - (b)
 - (i) on a unit of which there is a residential, commercial, or industrial building; or
 - (ii) on a unit of which there is a legal obligation on the part of the seller to complete construction of a residential, commercial, or industrial building within two years from date of disposition;
 - (c) unless a person who acquires land for one of the following purposes sells that land to one or more individuals as unimproved lots with no legal obligation on the part of the seller to construct a residential, commercial, or industrial building on that lot within two years from the date of disposition:
 - (i) if the person acquires an interest in the land for use in the business of constructing residential, commercial, or industrial buildings; or
 - (ii) if the person acquires the type of land described in Subsection (1)(c)(i) for the purpose of disposition to a person engaged in the business of constructing residential, commercial, or industrial buildings;
 - (d) pursuant to court order;
 - (e) by a government or government agency;
 - (f)
 - (i) if the interest lies within the boundaries of a city or a county which:
 - (A) has a planning and zoning board using at least one professional planner;
 - (B) enacts ordinances that require approval of planning, zoning, and plats, including the approval of plans for streets, culinary water, sanitary sewer, and flood control; and
 - (C) will have the improvements described in Subsection (1)(f)(i)(B) plus telephone and electricity; and

- (ii) if at the time of the offer or disposition the subdivider furnishes satisfactory assurance of completion of the improvements described in Subsection (1)(f)(i)(C);
 - (g) in an industrial park;
 - (h) as cemetery lots; or
 - (i) if the interest is offered as part of a camp resort as defined in Section 57-19-2 or a timeshare development as defined in Section 57-19-2.
- (2) Unless the method of disposition is adopted for the purpose of evasion of this chapter or the provisions of the federal act, this chapter, except as specifically designated, does not apply to an offer or disposition of:
 - (a) indebtedness secured by a mortgage or deed of trust on real estate;
 - (b) a security or unit of interest issued by a real estate investment trust regulated under any state or federal statute;
 - (c) subject to Subsection (5), subdivided lands registered under the federal act and which the division finds to be in the public interest to exempt from the registration requirements of this chapter;
 - (d) a security currently registered with the Division of Securities; or
 - (e) an interest in oil, gas, or other minerals or a royalty interest in these assets if the offer or disposition of the interest is regulated as a security by the federal government or by the Division of Securities.
- (3)
 - (a) Notwithstanding the exemptions in Subsections (1) and (2), a person making an offer or disposition of an interest in land that is located in Utah shall apply to the division for an exemption before the offer or disposition is made if:
 - (i) the person is representing, in connection with the offer or disposition, the availability of culinary water service to or on the subdivided land; and
 - (ii) the culinary water service is provided by a water corporation as defined in Section 54-2-1.
 - (b) A subdivider seeking to qualify under this exemption shall file with the division a filing fee of \$50 and an application containing:
 - (i) information required by the division to show that the offer or disposition is exempt under this section;
 - (ii) a statement as to what entity will be providing culinary water service and the nature of that entity; and
 - (iii)
 - (A) a copy of the entity's certificate of convenience and necessity issued by the Public Service Commission; or
 - (B) evidence that the entity providing water service is exempt from the jurisdiction of the Public Service Commission.
- (4)
 - (a) The director may by rule or order exempt a person from a requirement of this chapter if the director finds that the offering of an interest in a subdivision is essentially noncommercial.
 - (b) For purposes of this section, the bulk sale of subdivided lands by a subdivider to another person who will become the subdivider of those lands is considered essentially noncommercial.
- (5)
 - (a) A subdivider seeking to qualify under the exemption described in Subsection (2)(c) shall file with the division:
 - (i) a copy of an effective statement of record filed with the Consumer Financial Protection Bureau; and

- (ii) a filing fee of \$100.
- (b) If a subdivider does not qualify under the exemption described in Subsection (2)(c), the division shall credit the filing fee described in Subsection (5)(a) to the filing fee required for registration under this chapter.
- (c) Nothing in this Subsection (5) exempts a subdivider from:
 - (i) Sections 57-11-16 and 57-11-17; or
 - (ii) the requirement to file an annual report with the division under Section 57-11-10.
- (6) Notwithstanding an exemption under this section, the division:
 - (a) retains jurisdiction over an offer or disposition of an interest in land to determine whether or not the exemption continues to apply; and
 - (b) may require compliance with this chapter if an exemption no longer applies.

Amended by Chapter 292, 2013 General Session

57-11-5 Registration, public offering statement, and receipt required for sale of subdivided land -- Temporary permit -- Right of rescission.

Unless the subdivided lands or the transaction is exempt under Section 57-11-4, all of the following apply:

- (1) No person may offer or dispose of any interest in subdivided lands located in this state nor offer or dispose in this state of any interest in subdivided lands located outside of this state prior to the time the subdivided lands are registered in accordance with this chapter.
- (2) Notwithstanding Subsection (1), the division may grant a temporary permit allowing the developer to begin a sales program while the registration is in process. In order to obtain a temporary permit the developer must:
 - (a) submit an application to the division for a temporary permit in the form required by the division;
 - (b) submit a substantially complete application for registration to the division, including all appropriate fees and exhibits required under Sections 57-11-6 and 57-11-7 in addition to a temporary permit fee of \$100;
 - (c) provide evidence acceptable to the division that all funds received by the developer or marketing agent will be placed into an independent escrow with instructions that funds will not be released until a final registration has been granted;
 - (d) give to each purchaser and potential purchaser a copy of the proposed property report which the developer has submitted to the division with the original application; and
 - (e) give to each purchaser the opportunity to rescind the purchase in accordance with this section. The purchaser must be granted an additional opportunity to rescind upon the issuance of an approved registration if the division determines that there is a substantial difference in the disclosures contained in the final property report and those given to the purchaser in the proposed property report.
- (3) Any contract or agreement of disposition for an interest in subdivided lands may be rescinded by the purchaser without cause by midnight of the fifth calendar day after the execution of the contract or agreement of disposition. This right of rescission may not be waived by agreement. The contract or agreement of disposition shall state in boldface type on the signature page above all signatures: YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF DISPOSITION BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT. WRITTEN NOTICE OF CANCELLATION MUST BE PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, POSTMARKED BY MIDNIGHT OF THE FIFTH

CALENDAR DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT, TO THE SELLER AT: (Address of Seller).

- (4) No person may dispose of any interest in subdivided lands without delivering to the purchaser an effective, current public offering statement and obtaining a dated, signed receipt for the public offering statement in a form to be approved by the division from each purchaser. The subdivider shall retain each receipt for two years from the date of its execution. All receipts shall be made available for inspection upon request by the division. Failure to comply with this subsection shall not constitute a cause of action under Section 57-11-17 but shall be grounds for appropriate action by the division under Sections 57-11-13 and 57-11-14.

Amended by Chapter 86, 2000 General Session

57-11-6 Application for registration -- Required documents and information -- Filing fee and deposit -- Consolidation of registration of additional lands -- Reports of changes.

- (1) The application for registration of subdivided lands shall be filed as prescribed by the division's rules and, unless otherwise provided by the division, shall include, but is not limited to, the following documents and information:
- (a) an irrevocable appointment of the division to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;
 - (b) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the units, and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;
 - (c) the states or jurisdictions, including the United States, in which an application for registration or similar document has been filed, and a copy of any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
 - (d) the applicant's name and address, and the form, date, and jurisdiction of organization; the address of each of its offices in this state; and the name and address of the individual to whom the applicant wishes to have the division direct all communications;
 - (e) the name, address, and principal occupation for the past five years of every director, officer, or general partner of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within 30 days of the filing of the application;
 - (f) a statement, in a form acceptable to the division, of the condition of the title to the subdivided lands, including encumbrances, as of a specified date within 30 days of the date of application, which statement:
 - (i) if the subdivided lands are situated in this state, shall be in the form of a title opinion from a title insurer qualified to engage in the title insurance business in this state or an opinion of an attorney, licensed to practice in this state and who is not a salaried employee, officer, or director of the applicant or owner;
 - (ii) if the subdivided lands are situated in another jurisdiction, shall be in the form of an opinion of an attorney licensed to practice in the jurisdiction where the lands are situated and who is not a salaried employee, officer, or director of the applicant or owner; or
 - (iii) may be substituted by other evidence of title acceptable to the division;
 - (g) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

- (h) copies of the instruments by which the interest in the subdivided lands to be disposed of to the purchaser was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with recording data, but if any of these instruments contain any information relating to the consideration paid upon the prior acquisition of the subdivided lands, this information may be blocked out;
- (i) if there is a lien or encumbrance affecting more than one unit, a statement of the consequences to a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
- (j) copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;
- (k) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and of any existing or proposed taxes or special assessments which affect the subdivided lands;
- (l)
 - (i) if the subdivided lands are situated in this state, and unless all lands to be disposed of are included on a subdivision plat map which has been filed and approved pursuant to Title 17, Counties, an opinion by an attorney, licensed to practice in this state and who is not a salaried employee, officer, or director of the applicant or owner, that:
 - (A) the division proposed or made does not or will not violate any existing state statute or local ordinance; and
 - (B) all permits or approvals have been obtained from the applicable state or local authorities necessary for the subdivided lands to be put to the use for which they are offered, except for those permits or approvals which will not be granted until the subdivided lands are registered under this chapter if this registration is the only condition precedent to the granting of the permits or approvals; or
 - (ii) if the subdivided lands are situated in another jurisdiction, an opinion by an attorney licensed to practice in that jurisdiction and who is not a salaried employee, officer, or director of the applicant or owner, that the division proposed or made does not violate any existing statute, ordinance, or other law;
- (m) a statement of the existing provisions for access, sewage disposal, water (including a supply of culinary water), and other public utilities in the subdivision and, if they are not presently available but are feasible, the estimated cost to the purchaser of their procurement;
- (n) a statement of any improvements to be installed, the schedule for their completion, any provisions for maintenance of those improvements, and estimated costs to the purchaser;
- (o) a statement declaring whether or not the applicant is or will be representing, in connection with an offer or disposition of land, that culinary water service will be available to or on the subdivided lands, and if the applicant is or will be so representing:
 - (i) a statement as to what entity will be providing the culinary water service and the nature of the entity; and
 - (ii) if the entity providing the service is not a municipal system, a certificate from the Public Service Commission that the entity providing the culinary water service either holds a certificate of convenience and necessity from the commission, or has been found by the Public Service Commission to be exempt from its jurisdiction;
- (p) a narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;
- (q) the proposed public offering statement;

- (r) a copy of every public report or public offering statement or similar document filed with or issued by any agency of the United States or any state or jurisdiction; and
 - (s) any other reasonable information, including any current financial statement, which the division by its rules requires for the protection of purchasers.
- (2) Each application for registration of subdivided lands shall be accompanied by a filing fee of \$500 for up to 30 units, plus an additional \$3 per unit for each unit over 30 units up to a maximum of \$2,500 for each application, and a deposit of \$300 to cover all on-site inspection costs and expenses incurred by the division. If the \$300 deposit is insufficient to meet the estimated costs and expenses of the on-site inspection, the applicant or owner shall make an additional deposit sufficient to cover the estimated costs and expenses before the division will inspect the subdivided lands. The deposit shall be refunded to the extent it is not used, together with an itemized statement from the division of all amounts it has used.
- (3) In the event the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdividing lands for disposition under the same promotional plan by filing an application for consolidation accompanied by an additional fee of \$200, plus \$3 for each additional unit, up to a maximum of \$1,250 for each application, if at the time the subdivider makes the application all of the information required by Subsection (1) of this section has been brought current and covers the additional subdivided lands.
- (4) The subdivider shall report any material change in the information contained in an application for registration or consolidation within 15 days from the time that change becomes known to him.

Amended by Chapter 199, 1990 General Session

57-11-7 Public offering statement -- Contents -- Restrictions on use -- Alteration or amendments.

- (1) Every public offering statement shall disclose completely and accurately to prospective purchasers:
- (a) the physical characteristics of the subdivided lands offered; and
 - (b) unusual and material circumstances or features affecting the subdivided lands.
- (2) The proposed public offering statement submitted to the division shall be in a form prescribed by its rules and, unless otherwise provided by the division, shall include the following:
- (a) the name and principal address of the subdivider and the name and principal address of each officer, director, general partner, other principal, or person occupying a similar status or performing similar functions as defined by the rules of the division if the subdivider is a person other than an individual;
 - (b) a general description of the subdivided lands stating the total number of units in the offering;
 - (c) a statement summarizing in one place the significant terms of any encumbrances, easements, liens, severed interests, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit, and a statement of all existing or proposed taxes or special assessments which affect the subdivided lands;
 - (d) a statement of the use for which the property is offered;
 - (e) information concerning:
 - (i) any improvements, including streets, curbs, and gutters, sidewalks, water supply including a supply of culinary water, drainage and flood control systems, irrigation systems, sewage disposal facilities, and customary utilities;

- (ii) the estimated cost to the purchaser, the estimated date of completion, and the responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition; and
 - (iii) if for any reason any of the improvements described in Subsections (2)(e)(i) and (ii) cannot presently be constructed or maintained, a statement clearly setting forth this fact and giving the reasons therefor;
- (f)
- (i) a statement of existing zoning or other planned land use designation of each unit and the proposed use of each unit in the subdivision including uses as residential dwellings, agriculture, churches, schools, low density apartments, high density apartments and hotels, and a subdivision map showing the proposed use, the zoning, or other planned land use designation, unless each unit has the same proposed use, zoning, or other planned land use designation;
 - (ii) if the subdivision consists of more than one tract or other smaller division, the information and map required by Subsection (2)(f)(i) need only pertain to the tract or smaller division in which the units offered for disposition are located;
- (g) a map, which need not be drawn to scale, enabling one unfamiliar with the area in which the subdivision is located to reach the subdivision by road or other thoroughfare from a nearby town or city;
- (h)
- (i) the boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;
 - (ii) the location of existing underground and utility facilities; and
 - (iii) any conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of record, and utility facilities within the subdivision; and
- (i) any additional information the division may require to assure full and fair disclosure to prospective purchasers.
- (3)
- (a) The public offering statement may not be used for any promotional purposes either before registration of the subdivided lands or before the date the statement becomes effective.
 - (b) The statement may be used after it becomes effective only if it is used in its entirety.
 - (c) A person may not advertise or represent that the division approves or recommends the subdivided lands or their disposition.
 - (d) No portion of the public offering statement may be underscored, italicized, or printed in larger, heavier, or different color type than the remainder of the statement, unless the division requires it.
- (4)
- (a) The division may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers.
 - (b) A change in the substance of the promotional plan or plan of disposition or development of the subdivision may not be made after registration without notifying and receiving approval of the division and without making appropriate amendment of the public offering statement.
 - (c) A public offering statement is not current unless:
 - (i) all amendments are incorporated;
 - (ii) the subdivider has timely filed each renewal report required by Section 57-11-10; and
 - (iii) no cease and desist order issued pursuant to this chapter is in effect.
- (5) The subdivider must notify the division within five working days if he is convicted of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest

dealing in real estate transactions, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.

- (6) The subdivider must notify the division within five working days if the person which owns the subdivided lands files a petition in bankruptcy or if any other event occurs which may have a material adverse effect on the subdivision.

Amended by Chapter 324, 2010 General Session

57-11-8 Examination by division on application for registration.

Upon receipt of an application for registration in proper form, the division shall immediately initiate an examination to determine whether:

- (1) the requirements of Sections 57-11-6 and 57-11-7 have been satisfied;
- (2) the subdivider has not, or if a corporation or partnership, its officers, directors, general partners, or persons occupying a similar status or performing similar functions, or other principals as defined by the rules of the division have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past 10 years and has not been subject to any injunction or administrative order entered within the past 10 years restraining a false or misleading promotional plan involving land dispositions; and
- (3) the public offering statement requirements of this chapter have been satisfied.

Amended by Chapter 48, 1985 General Session

57-11-9 Notice of filing of application for registration -- Division orders of registration or rejection.

- (1)
 - (a) Upon receipt of the application for registration in proper form, the division shall issue a notice of filing to the applicant within five business days of the date of receipt of application.
 - (b) Within 30 days from the date of the notice of filing, or, if no notice of filing is issued within the time required, within 35 days from the date of receipt of the application, the division shall register the subdivided lands or reject the registration.
 - (c) If the division has not entered the rejection within 30 days from the date of notice of filing, the land is considered registered unless the applicant has consented in writing to a delay.
- (2)
 - (a) After inquiry and examination, if the division affirmatively determines that the requirements of Subsection 57-11-8(1) have been met, it shall register the subdivided lands and shall designate the form of the public offering statement.
 - (b) The division may provide that the public offering statement is not effective until evidence is obtained and made part of the public offering statement that demonstrates that all permits or approvals necessary for the subdivided lands to be put to the use for which they are offered have been granted.
- (3)
 - (a) After inquiry and examination, if the division determines that any of the requirements of Subsection 57-11-8(1) have not been met, it shall notify the applicant that the application for registration, the promotional plan, or the plan of disposition must be corrected within 15 days or within the time allowed by the division.
 - (b) If the requirements are not met within the time allowed, the division shall enter an order rejecting the registration, giving the reasons for the rejection.

- (c) Rejection of the registration is not effective for 20 days, during which time the applicant may request a hearing.

Amended by Chapter 161, 1987 General Session

57-11-10 Renewal report -- Renewal fee -- Examination by division -- Annual reports.

- (1)
 - (a) Within 30 days after each annual anniversary date of the division's registration of subdivided lands, the subdivider shall file a renewal report in the form prescribed by the division together with a renewal fee of \$200.
 - (b) The report shall reflect any material changes in information contained in the original application for registration, including any change in ownership of the subdivider.
 - (c) The report shall also indicate the number of units in the subdivision that have been disposed of since the division registered the subdivided lands.
- (2)
 - (a) The division may, upon the filing of a renewal report, initiate a renewal examination of the kind described in Section 57-11-8.
 - (b) If the division determines upon inquiry and examination that any of the requirements of Section 57-11-8 have not been met, it shall notify the subdivider that the report, the promotional plan, or the plan of disposition must be corrected within 20 days or any additional time allowed by the division.
 - (c) If the requirements are not met within the time allowed, the division may, notwithstanding the provisions of Section 57-11-13 and without further notice, issue a cease and desist order according to the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act, barring further sale of the subdivided lands.
- (3) The division may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

Amended by Chapter 382, 2008 General Session

57-11-11 Rules of division -- Filing advertising material -- Injunctions -- Intervention by division in suits -- General powers of division.

- (1)
 - (a) The division shall prescribe reasonable rules which shall be adopted, amended, or repealed only after a public hearing.
 - (b) The division shall:
 - (i) publish notice of the public hearing described in Subsection (1)(a):
 - (A) once in a newspaper or newspapers with statewide circulation and at least 20 days before the hearing; and
 - (B) on the Utah Public Notice Website created in Section 63F-1-701, for at least 20 days before the hearing; and
 - (ii) send a notice to a nonprofit organization which files a written request for notice with the division at least 20 days prior to the hearing.
- (2) The rules shall include but need not be limited to:
 - (a) provisions for advertising standards to assure full and fair disclosure; and
 - (b) provisions for escrow or trust agreements, performance bonds, or other means reasonably necessary to assure that all improvements referred to in the application for registration and

advertising will be completed and that purchasers will receive the interest in land contracted for.

- (3) These provisions, however, shall not be required if the city or county in which the subdivision is located requires similar means of assurance of a nature and in an amount no less adequate than is required under said rules:
 - (a) provisions for operating procedures;
 - (b) provisions for a shortened form of registration in cases where the division determines that the purposes of this act do not require a subdivision to be registered pursuant to an application containing all the information required by Section 57-11-6 or do not require that the public offering statement contain all the information required by Section 57-11-7; and
 - (c) other rules necessary and proper to accomplish the purpose of this chapter.
- (4) The division by rule or order, after reasonable notice, may require the filing of advertising material relating to subdivided lands prior to its distribution, provided that the division must approve or reject any advertising material within 15 days from the receipt thereof or the material shall be considered approved.
- (5) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule or order hereunder, the agency, with or without prior administrative proceedings, may bring an action in the district court of the district where said person maintains his residence or a place of business or where said act or practice has occurred or is about to occur, to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The division shall not be required to post a bond in any court proceedings.
- (6) The division shall be allowed to intervene in a suit involving subdivided lands, either as a party or as an amicus curiae, where it appears that the interpretation or constitutionality of any provision of law will be called into question. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the agency notice of the suit and copies of all pleadings. Failure to do so may, in the discretion of the division, constitute grounds for the division withholding any approval required by this chapter.
- (7) The division may:
 - (a) accept registrations filed in other states or with the federal government;
 - (b) contract with public agencies or qualified private persons in this state or other jurisdictions to perform investigative functions; and
 - (c) accept grants-in-aid from any source.
- (8) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices.

Amended by Chapter 340, 2011 General Session

57-11-12 Investigatory powers and proceedings of division.

- (1) The division may:
 - (a) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;
 - (b) require or permit any person to file a complaint in the form required by the division as to all the facts and circumstances concerning the matter to be investigated.

- (2) For the purpose of any investigation or proceeding under this act, the division or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.
- (3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to any district court for an order compelling compliance.

Amended by Chapter 86, 2000 General Session

57-11-13 Enforcement powers of division -- Cease and desist orders.

- (1)
 - (a) If the director has reason to believe that any person has been or is engaging in conduct violating this chapter, or has violated any lawful order or rule of the division, the director shall issue and serve upon the person a cease and desist order and may also order the person to take such affirmative actions the director determines will carry out the purposes of this chapter.
 - (b) The person served may request an adjudicative proceeding within 10 days after receiving the order.
 - (c) The cease and desist order remains in effect pending the hearing.
 - (d) The division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, if the person served requests a hearing.
- (2)
 - (a) After the hearing the director may issue an order making the cease and desist order permanent if the director finds there has been a violation of this chapter.
 - (b) If no hearing is requested and the person served does not obey the director's order, the director shall file suit in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter. The action shall be filed in the district court in the county in which the conduct occurred or where the person resides or carries on business.
- (3) The remedies and action provided in this section may not interfere with or prevent the prosecution of any other remedies or actions including criminal prosecutions.

Amended by Chapter 382, 2008 General Session

57-11-14 Revocation, suspension, or denial of registration -- Grounds -- Suspension or revocation of license.

- (1)
 - (a) If the division makes a written finding of fact that a subdivider engages in one or more acts described in Subsection (1)(b), the division may:
 - (i) deny an application for registration;
 - (ii) revoke, suspend, or deny reissuance of a registration; or
 - (iii) impose a civil penalty not to exceed the greater of:
 - (A) \$2,500 for each violation; or
 - (B) the amount of any gain or economic benefit derived from each violation.

- (b) Subsection (1)(a) applies if the division makes a written finding of fact that a subdivider:
 - (i) fails to comply with the terms of a cease and desist order;
 - (ii) is convicted in a court prior or subsequent to the filing of the application for registration of a crime involving:
 - (A) fraud;
 - (B) deception;
 - (C) false pretenses;
 - (D) misrepresentation;
 - (E) false advertising; or
 - (F) dishonest dealing in real estate transactions;
 - (iii) is subject to an injunction or administrative order restraining a false or misleading promotional plan involving land dispositions;
 - (iv) disposes of, conceals, or diverts funds or assets of any person so as to defeat the rights of subdivision purchasers;
 - (v) fails to perform faithfully a stipulation or agreement made with the division as an inducement to:
 - (A) grant a registration;
 - (B) reinstate a registration;
 - (C) revoke a cease and desist order; or
 - (D) approve any promotional plan or public offering statement;
 - (vi) makes an intentional misrepresentation, or conceals a material fact, in an application for registration;
 - (vii) violates this chapter or the rules adopted under this chapter;
 - (viii) directly or through an agent or employee knowingly engages in false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
 - (ix) engages in the offering of subdivided lands that has constituted or that may constitute a fraud upon purchasers or prospective purchasers of the subdivided lands; or
 - (x) engages in a dishonest practice in any industry involving sales to consumers.
 - (c) The division shall accompany with a finding of fact required by this Subsection (1) a concise and explicit statement of the underlying facts supporting the finding.
- (2) As an alternative to revoking the registration of a subdivider, the director may issue a cease and desist order if after notice and a hearing the director finds that the subdivider is guilty of a violation for which revocation may be ordered.
- (3)
- (a) The division shall suspend or revoke the license of a principal broker, associate broker, or sales agent who violates this chapter for the period of time the director determines to be justified under the circumstances.
 - (b) A suspension or revocation under this section is in addition to any other penalty that may be imposed under this chapter, subject to Section 61-2f-404.

Amended by Chapter 379, 2010 General Session

57-11-15 Judicial review.

- (1) Any person aggrieved by any order of the division may obtain judicial review.
- (2)

- (a) Venue for judicial review of informal adjudicative proceedings is in the district court where the aggrieved person maintains his principal place of business, if situated within this state, or otherwise in the Third Judicial District.
- (b) Judicial review of informal adjudicative proceedings shall be conducted by the court without a jury.

Amended by Chapter 161, 1987 General Session

57-11-16 Violations -- Duties of attorney general, county attorney, or district attorney.

- (1)
 - (a) A person who violates this chapter is guilty of a class B misdemeanor, except as provided in Subsection (1)(b).
 - (b) A person who knowingly makes an untrue statement or knowingly omits a material fact in an application for registration under this chapter or under the federal act is guilty of a class A misdemeanor.
- (2)
 - (a) The attorney general shall advise the division and the division's staff in matters requiring legal counsel or services in the exercise of the division's power or performance of the division's duties.
 - (b) In the prosecution or defense of an action under this section, the attorney general, the county attorney, or the district attorney of the appropriate county shall perform the necessary legal services without compensation other than their regular salaries.

Amended by Chapter 289, 2011 General Session

57-11-17 Violations -- Civil remedies.

- (1)
 - (a) A person is liable as provided in Subsection (1)(b) if that person:
 - (i) disposes of subdivided lands in violation of Subsection 57-11-5(1), (2), or (3);
 - (ii) in disposing of subdivided lands, makes an untrue statement of a material fact; or
 - (iii) in disposing of subdivided lands, omits a material fact required to be stated in a registration statement, public offering statement, statement of record or public report, necessary to make the statements made not misleading.
 - (b) A person described in Subsection (1)(a) is liable as provided in this section to the purchaser unless, in the case of an untruth or omission, it is proved that:
 - (i) the purchaser knew of the untruth or omission; or
 - (ii) the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission.
- (2) In addition to any other remedies, the purchaser under Subsection (1) may recover the consideration paid for the unit together with interest at the rate of 7% per year from the date of payment, property taxes paid, costs, and reasonable attorney fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the unit, the purchaser may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of 7% per year on that amount from the date of disposition.
- (3) Every person who directly or indirectly controls a subdivider liable under Subsection (1), every general partner, officer, or director of a subdivider, every person occupying a similar status

or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

- (4) Every person whose occupation gives authority to a statement which with that person's consent has been used in an application for registration, public offering statement, statement of record or public report, if the person is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in the person's statement and only if the person fails to prove that the person did not know and in the exercise of the reasonable care of a person in the person's occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.
- (5) A tender of reconveyance may be made at any time before the entry of judgment.
- (6) A person may not recover under this section in actions commenced more than four years after the person's first payment of money to the subdivider in the contested action.
- (7) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or order under it is void.

Amended by Chapter 325, 2007 General Session

57-11-18 Dispositions subject to chapter -- Jurisdiction of district courts.

Dispositions of subdivided lands are subject to this act, and the district courts of this state have jurisdiction in claims or causes of action arising under this act, if:

- (1) The subdivided lands offered for disposition are located in this state;
- (2) The subdivider's principal office is located in this state; or
- (3) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

Enacted by Chapter 158, 1973 General Session

57-11-20 Service of process.

- (1) In addition to the methods of service provided for in the Utah Rules of Civil Procedure, service may be made by delivering a copy of the process to the office of the division, but it is not effective unless the plaintiff, which may be the division in a proceeding instituted by it:
 - (a) forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address; and
 - (b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
- (2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the division to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in Subsection (1).

Enacted by Chapter 158, 1973 General Session

57-11-21 Uniformity of construction.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Enacted by Chapter 158, 1973 General Session