

Chapter 23

Real Estate Cooperative Marketing Act

57-23-1 Short title.

This chapter is known as the "Real Estate Cooperative Marketing Act."

Enacted by Chapter 262, 1991 General Session

57-23-2 Definitions.

As used in this chapter:

- (1) "Cooperative" means a form of coownership of real estate in which:
 - (a) the fee interest in the real estate is held by a corporation, partnership, trust, or other legal entity;
 - (b) an individual's interest in the cooperative is evidenced in a form such as stock, participation shares, membership certificates, or similar instrument; and
 - (c) the participating individual's right of occupancy is demonstrated by a proprietary lease or similar instrument.
- (2) "Division" means the Division of Real Estate of the Department of Commerce.

Enacted by Chapter 262, 1991 General Session

57-23-3 Administration by division.

This chapter shall be administered by the Division of Real Estate.

Enacted by Chapter 262, 1991 General Session

57-23-4 Exclusions.

This chapter does not apply to:

- (1) an interest in real estate regulated under Title 57, Chapter 19, Timeshare and Camp Resort Act;
- (2) an offering for an interest in real estate which is regulated under:
 - (a) Title 61, Chapter 1, Utah Uniform Securities Act;
 - (b) the securities laws of any state; or
 - (c) federal securities laws; or
- (3) a sale of manufactured housing licensed under Title 58, Chapter 56, Building Inspector and Factory Built Housing Licensing Act, unless the sale is made in conjunction with an offering or sale of a cooperative interest under this chapter.

Amended by Chapter 14, 2011 General Session

57-23-5 License required.

Except as provided by Section 61-2f-202, an individual may not offer, sell, or otherwise dispose of a cooperative interest in this state unless the individual is licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, as a principal broker, associate broker, or sales agent.

Amended by Chapter 379, 2010 General Session

57-23-6 Disclosure required.

- (1) An individual may not offer, sell, or otherwise dispose of a cooperative interest in this state without making oral and written disclosure to the prospective purchaser regarding:
 - (a) the actual property interest being sold;
 - (b) the actual right of occupancy associated with that property interest;
 - (c) any encumbrance to which the property interest is subject; and
 - (d) the terms of any financing, refinancing, prior sale, resale, or loan assumption to which the property interest is subject.
- (2) The disclosure required under Subsection (1) must be made prior to signing the purchase contract, the proprietary lease, or similar documents intended by the parties to complete the sale or disposal of the cooperative interest.

Amended by Chapter 169, 1992 General Session

57-23-7 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 chapter or any rule or order made by the division under this chapter;
 - (b) require or permit any person to file a statement in writing, under oath or otherwise as the division determines, as to all the facts and circumstances concerning the matter to be investigated.
- (2) For the purpose of any investigation or proceeding under this chapter:
 - (a) the division may administer oaths or affirmations; and
 - (b) upon its own motion or upon the request of any party, the division may:
 - (i) subpoena witnesses;
 - (ii) compel their attendance;
 - (iii) take evidence; and
 - (iv) require the production of any matter which is relevant to the investigation, including:
 - (A) the existence, description, nature, custody, condition and location of any books, documents, or other tangible records;
 - (B) the identity and location of persons having knowledge of relevant facts; or
 - (C) any other matter reasonably calculated to lead to the discovery of material evidence.
- (3) Upon failure of any person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected by the subpoena or information sought to be discovered under the subpoena, the division may apply to the district court for an order compelling compliance.

Enacted by Chapter 169, 1992 General Session

57-23-8 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. The director may also order the person to take whatever affirmative actions the director determines to be necessary to carry out the purposes of this chapter.

- (b) The person served with an order under Subsection (1)(a) may request an adjudicative proceeding within 10 days after receiving the order. The cease and desist order remains in effect pending the hearing.
 - (c) 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 a final 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 may 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, where the person served with the cease and desist order either resides or carries on business.
- (3) The remedies and action provided in this section are not exclusive but are in addition to any other remedies or actions available under Section 57-23-10.

Amended by Chapter 382, 2008 General Session

57-23-9 Voidable agreements.

Any agreement to purchase an interest in a real estate cooperative entered into in violation of this chapter may, at the option of the purchaser, be voided and the purchaser's entire consideration paid together with interest at the legal rate, any costs, and reasonable attorney's fees shall be recovered. However, no suit under this section may be brought more than two years after:

- (1) the date the agreement is signed; or
- (2) the date the purchaser knew or reasonably should have known of the violation.

Enacted by Chapter 169, 1992 General Session

57-23-10 Prosecution -- Penalties.

- (1) The director may refer any available evidence concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the appropriate prosecuting attorney, who may, in turn, institute the appropriate civil or criminal proceedings under this chapter.
- (2) Any person who willfully violates any provision of this chapter is guilty of a class B misdemeanor.
- (3) For purposes of applying Title 13, Chapter 11, Utah Consumer Sales Practices Act, any material violation of the provisions of this chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.
- (4) The remedies provided in this chapter are cumulative and nonexclusive, and do not affect any other remedy available at law.

Enacted by Chapter 169, 1992 General Session