



- 30 13-42-102, Utah Code Annotated 1953
- 31 13-42-201, Utah Code Annotated 1953
- 32 13-42-202, Utah Code Annotated 1953
- 33 13-42-203, Utah Code Annotated 1953
- 34 13-42-204, Utah Code Annotated 1953
- 35 13-42-205, Utah Code Annotated 1953
- 36 13-42-206, Utah Code Annotated 1953

37 REPEALS:

38 63-34-13, as last amended by Chapters 90 and 223, Laws of Utah 2004



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section 13-42-101 is enacted to read:

42 **CHAPTER 42. PROPERTY RIGHTS OMBUDSMAN ACT**

43 **Part 1. General Provisions**

44 **13-42-101. Title.**

45 This chapter is known as the "Property Rights Ombudsman Act."

46 Section 2. Section 13-42-102 is enacted to read:

47 **13-42-102. Definitions.**

48 As used in this chapter:

49 (1) "Constitutional taking" or "taking" means a governmental action resulting in a  
50 taking of real property that requires compensation to the owner of the property under:

51 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

52 (b) Utah Constitution Article I, Section 22.

53 (2) "Takings and eminent domain law" means the provisions of the federal and state  
54 constitutions, the case law interpreting those provisions, and any relevant statutory provisions  
55 that:

56 (a) involve constitutional issues arising from the use or ownership of real property;

57 (b) require a governmental unit to compensate a real property owner for a

58 constitutional taking; or

59 (c) provide for relocation assistance to those persons who are displaced by the use of  
60 eminent domain.

61 Section 3. Section **13-42-201** is enacted to read:

62 **Part 2. Office of the Property Rights Ombudsman**

63 **13-42-201. Office of the Property Rights Ombudsman.**

64 (1) There is created an Office of the Property Rights Ombudsman in the Department of  
65 Commerce.

66 (2) The executive director of the Department of Commerce, with the concurrence of  
67 the Land Use and Eminent Domain Advisory Board created in Section 13-42-202, shall appoint  
68 attorneys with background or expertise in takings, eminent domain, and land use law to fill  
69 legal positions within the Office of the Property Rights Ombudsman.

70 (3) A person appointed under this section is an exempt employee.

71 (4) An attorney appointed under this section is an at-will employee who may be  
72 terminated without cause by:

73 (a) the executive director of the Department of Commerce; or

74 (b) an action of the land Use and Eminent Domain Advisory Board.

75 Section 4. Section **13-42-202** is enacted to read:

76 **13-42-202. Land Use and Eminent Domain Advisory Board -- Appointment --**  
77 **Compensation -- Duties.**

78 (1) There is created the Land Use and Eminent Domain Advisory Board, within the  
79 Office of the Property Rights Ombudsman, consisting of the following seven members:

80 (a) one individual representing special service districts, nominated by the Utah  
81 Association of Special Districts;

82 (b) one individual representing municipal government, nominated by the Utah League  
83 of Cities and Towns;

84 (c) one individual representing county government, nominated by the Utah Association  
85 of Counties;

86 (d) one individual representing the residential construction industry, nominated by the  
87 Utah Home Builders Association;

88 (e) one individual representing the real estate industry, nominated by the Utah  
89 Association of Realtors;

90 (f) one individual representing the land development community, jointly nominated by  
91 the Utah Association of Realtors and the Home Builders Association of Utah; and

92 (g) one individual who:

93 (i) is a citizen with experience in land use issues;

94 (ii) does not hold public office; and

95 (iii) is not currently employed, nor has been employed in the previous twelve months,  
96 by any of the entities or industries listed in Subsections (1)(a) through (f).

97 (2) After receiving nominations, the governor shall appoint members to the board.

98 (3) The term of office of each member is four years, except that the governor shall  
99 appoint three of the members of the board to an initial two-year term.

100 (4) Each mid-term vacancy shall be filled for the unexpired term in the same manner as  
101 an appointment under Subsections (1) and (2).

102 (5) (a) Board members shall elect a chair from their number and establish rules for the  
103 organization and operation of the board.

104 (b) Five members of the board constitute a quorum for the conduct of the board's  
105 business.

106 (c) The affirmative vote of five members is required to constitute the decision of the  
107 board on any matter.

108 (6) (a) No member may receive compensation or benefits for the member's service on  
109 the board.

110 (b) (i) A member who is not a government officer or employee may be reimbursed for  
111 reasonable expenses incurred in the performance of the member's official duties at the rates  
112 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

113 (ii) A member who is a government officer or employee and who does not receive

114 expenses from the member's agency may be reimbursed for reasonable expenses incurred in the  
115 performance of the member's official duties at the rates established by the Division of Finance  
116 under Sections 63A-3-106 and 63A-3-107.

117 (c) A member may decline to be reimbursed for reasonable expenses incurred in the  
118 performance of the member's official duties.

119 (d) A member need not give a bond for the performance of official duties.

120 (7) The Office of the Property Rights Ombudsman shall provide staff to the board.

121 (8) The board shall:

122 (a) receive reports from the Office of the Property Rights Ombudsman that are  
123 requested by the board;

124 (b) establish rules of conduct and performance for the Office of the Property Rights  
125 Ombudsman;

126 (c) receive donations or contributions from any source for the Office of the Property  
127 Rights Ombudsman's benefit;

128 (d) subject to any restriction placed on a donation or contribution received under  
129 Subsection (8)(c), authorize the expenditure of donations or contributions for the Office of the  
130 Property Rights Ombudsman's benefit;

131 (e) receive budget recommendations from the Office of the Property Rights  
132 Ombudsman; and

133 (f) revise budget recommendations received under Subsection (8)(e).

134 (9) The board shall maintain a resource list of qualified arbitrators and mediators who  
135 may be appointed under Section 13-42-204 and qualified persons who may be appointed to  
136 render advisory opinions under Section 13-42-205.

137 Section 5. Section **13-42-203** is enacted to read:

138 **13-42-203. Office of the Property Rights Ombudsman -- Duties.**

139 (1) The Office of the Property Rights Ombudsman shall:

140 (a) develop and maintain expertise in and understanding of takings, eminent domain,  
141 and land use law;

142 (b) assist state agencies and local governments in developing the guidelines required by  
143 Title 63, Chapter 90a, Constitutional Taking Issues;

144 (c) at the request of a state agency or local government, assist the state agency or local  
145 government, in analyzing actions with potential takings implications or other land use issues;

146 (d) advise real property owners who have a legitimate potential or actual takings claim  
147 against a state or local government entity or have questions about takings, eminent domain, and  
148 land use law;

149 (e) identify state or local government actions that have potential takings implications  
150 and, if appropriate, advise those state or local government entities about those implications;  
151 and

152 (f) provide information to private citizens, civic groups, government entities, and other  
153 interested parties about takings, eminent domain, and land use law and their rights and  
154 responsibilities under the takings, eminent domain, or land use laws through seminars and  
155 publications, and by other appropriate means.

156 (2) The Office of the Property Rights Ombudsman may not represent private property  
157 owners, state agencies, or local governments in court or in adjudicative proceedings under Title  
158 63, Chapter 46b, Administrative Procedures Act.

159 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third  
160 party rendering an advisory opinion under Section 13-42-205 or 13-42-206, may be compelled  
161 to testify in a civil action filed concerning the subject matter of any review, mediation, or  
162 arbitration by, or arranged through, the office.

163 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of  
164 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the  
165 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

166 (b) Subsection (4)(a) does not apply to:

167 (i) actions brought under authority of Title 78, Chapter 6, Small Claims Courts;

168 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78,  
169 Chapter 31a, Utah Uniform Arbitration Act;

170 (iii) actions for de novo review of an arbitration award or issue brought under the  
171 authority of Subsection 13-42-204(3)(a)(i); or

172 (iv) advisory opinions provided for in Sections 13-42-205 and 13-42-206.

173 Section 6. Section **13-42-204** is enacted to read:

174 **13-42-204. Office of Property Rights Ombudsman -- Arbitration or mediation of**  
175 **takings or eminent domain disputes.**

176 (1) If requested by the private property owner and otherwise appropriate, the Office of  
177 the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for, disputes  
178 between private property owners and government entities that involve:

179 (a) takings or eminent domain issues;

180 (b) actions for eminent domain under Title 78, Chapter 34, Eminent Domain; or

181 (c) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation  
182 Assistance Act.

183 (2) If arbitration or mediation is requested by a private property owner under this  
184 section, Section 57-12-14 or 78-34-21, and arranged by the Office of the Property Rights  
185 Ombudsman, the government entity or condemning entity shall participate in the mediation or  
186 arbitration as if the matter were ordered to mediation or arbitration by a court.

187 (3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of  
188 the Property Rights Ombudsman shall follow the procedures and requirements of Title 78,  
189 Chapter 31a, Utah Uniform Arbitration Act.

190 (ii) In applying Title 78, Chapter 31a, Utah Uniform Arbitration Act, the arbitrator and  
191 parties shall treat the matter as if:

192 (A) it were ordered to arbitration by a court; and

193 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as  
194 provided for in this section was appointed as arbitrator by the court.

195 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be  
196 arbitrated is not already the subject of legal action, the district court having jurisdiction over  
197 the county where the private property involved in the dispute is located is the court referred to

198 in Title 78, Chapter 31a, Utah Uniform Arbitration Act.

199 (iv) An arbitration award under this chapter may not be vacated under the provisions of  
200 Subsection 78-31a-124(1)(e) because of the lack of an arbitration agreement between the  
201 parties.

202 (b) The Office of the Property Rights Ombudsman shall issue a written statement  
203 declining to arbitrate or to appoint an arbitrator when, in the opinion of the Office of the  
204 Property Rights Ombudsman:

205 (i) the issues are not ripe for review;

206 (ii) assuming the alleged facts are true, no cause of action exists under United States or  
207 Utah law;

208 (iii) all issues raised are beyond the scope of the Office of the Property Rights  
209 Ombudsman's statutory duty to review; or

210 (iv) the arbitration is otherwise not appropriate.

211 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to  
212 arbitrate a dispute when:

213 (A) either party objects to the Office of the Property Rights Ombudsman serving as the  
214 arbitrator and agrees to pay for the services of another arbitrator;

215 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a  
216 reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for  
217 the services of another arbitrator; or

218 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to  
219 appoint another person to arbitrate the dispute with no charge to the parties for the services of  
220 the appointed arbitrator.

221 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights  
222 Ombudsman shall appoint an arbitrator who is agreeable to:

223 (A) both parties; or

224 (B) the Office of the Property Rights Ombudsman and the party paying for the  
225 arbitrator.

226 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon  
227 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

228 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse  
229 expenses incurred in the performance of the arbitrator's duties at the rates established by the  
230 Division of Finance under Sections 63A-3-106 and 63A-3-107.

231 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,  
232 regulations, and rules of Utah and the United States in conducting the arbitration and in  
233 determining the award.

234 (e) The property owner and government entity may agree in advance of arbitration that  
235 the arbitration is binding and that no de novo review may occur.

236 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not  
237 necessary before bringing legal action to adjudicate any claim.

238 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman  
239 does not constitute, and may not be interpreted as constituting, a failure to exhaust available  
240 administrative remedies or as a bar to bringing legal action.

241 (h) Arbitration under this section is not subject to Title 63, Chapter 46b,  
242 Administrative Procedures Act, or Title 78, Chapter 31b, Alternative Dispute Resolution Act.

243 (i) Within 30 days after an arbitrator issues a final award, and except as provided in  
244 Subsection (3)(e), any party may submit the award, or any issue upon which the award is based,  
245 to the district court for de novo review.

246 (4) The filing with the Office of the Property Rights Ombudsman of a request for  
247 mediation or arbitration of a constitutional taking issue does not stay any county or municipal  
248 land use decision, including the decision of a board of adjustment.

249 (5) Members of the Office of the Property Rights Ombudsman may not be compelled  
250 to testify in a civil action filed concerning the subject matter of any review, mediation, or  
251 arbitration by the Office of the Property Rights Ombudsman.

252 Section 7. Section **13-42-205** is enacted to read:

253 **13-42-205. Advisory opinion.**

254 At any time before a final decision on a land use application by a local appeal authority  
255 under Section 10-9a-708 or 17-27a-708, a local government or a potentially aggrieved person  
256 may, in accordance with Section 13-42-206, request a written advisory opinion from a neutral  
257 third party to determine compliance with:

- 258 (1) Sections 10-9a-507 through 10-9a-511;  
259 (2) Sections 17-27a-506 through 17-27a-510; and  
260 (3) Title 11, Chapter 36, Impact Fees Act.

261 Section 8. Section **13-42-206** is enacted to read:

262 **13-42-206. Advisory Opinion -- Process.**

263 (1) A request for an advisory opinion under Section 13-42-205 shall be:

- 264 (a) filed with the Office of the Property Rights Ombudsman; and  
265 (b) accompanied by a filing fee of \$150.

266 (2) The Office of the Property Rights Ombudsman may establish policies providing for  
267 partial fee waivers for a person who is financially unable to pay the entire fee.

268 (3) A person requesting an advisory opinion need not exhaust administrative remedies,  
269 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an  
270 advisory opinion.

271 (4) The Office of the Property Rights Ombudsman shall:

- 272 (a) deliver notice of the request to opposing parties indicated in the request;  
273 (b) inquire of all parties if there are other necessary parties to the dispute; and  
274 (c) deliver notice to all necessary parties.

275 (5) If a governmental entity is an opposing party, the Office of the Property Rights  
276 Ombudsman shall deliver the request in the manner provided for in Section 63-30d-301.

277 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the  
278 parties can agree to a neutral third party to issue an advisory opinion.

279 (b) If no agreement can be reached within four business days after notice is delivered  
280 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall  
281 appoint a neutral third party to issue an advisory opinion.

282 (7) All parties that are the subject of the request for advisory opinion shall:  
283 (a) share equally in the cost of the advisory opinion; and  
284 (b) provide financial assurance for payment that the neutral third party requires.  
285 (8) The neutral third party shall comply with the provisions of Section 78-31a-109, and  
286 shall promptly:  
287 (a) seek a response from all necessary parties to the issues raised in the request for  
288 advisory opinion;  
289 (b) investigate and consider all responses; and  
290 (c) issue a written advisory opinion within 15 business days after the appointment of  
291 the neutral third party under Subsection (6)(b), unless:  
292 (i) the parties agree to extend the deadline; or  
293 (ii) the neutral third party determines that the matter is complex and requires additional  
294 time to render an opinion, which may not exceed 30 calendar days.  
295 (9) An advisory opinion shall include a statement of the facts and law supporting the  
296 opinion's conclusions.  
297 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights  
298 Ombudsman shall be delivered as soon as practicable to all necessary parties.  
299 (b) A copy of the advisory opinion shall be delivered to the government entity in the  
300 manner provided for in Section 63-30d-401.  
301 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is  
302 not binding on any party to, nor admissible as evidence in, a dispute involving land use law  
303 except as provided in Subsection (12).  
304 (12) (a) If the same issue that is the subject of an advisory opinion is listed as a cause  
305 of action in litigation, and that cause of action is litigated on the same facts and circumstances  
306 and is resolved consistent with the advisory opinion, the substantially prevailing party on that  
307 cause of action may collect reasonable attorney fees and court costs pertaining to the  
308 development of that cause of action from the date of the delivery of the advisory opinion to the  
309 date of the court's resolution.

310           (b) Nothing in this Subsection (12) is intended to create any new cause of action under  
311 land use law.

312           (13) Unless filed by the local government, a request for an advisory opinion under  
313 Section 13-42-205 does not stay the progress of a land use application, or the effect of a land  
314 use decision.

315           Section 9. **Repealer.**

316           This bill repeals:

317           Section **63-34-13, Property rights ombudsman -- Powers -- Arbitration procedures.**