

**EXEMPTION FROM LICENSURE BY
DIVISION OF REAL ESTATE**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark W. Walker

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to local governments and licensure by the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ exempts from licensure certain regular salaried employees of a county when acting on behalf of the county;
- ▶ expands the activities local government employees may engage in without being licensed; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3-1110, as enacted by Laws of Utah 2007, Chapter 325

61-2-3, as last amended by Laws of Utah 2007, Chapter 325

ENACTS:



28 17-50-106, Utah Code Annotated 1953



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

31 Section 1. Section 10-3-1110 is amended to read:

32 **10-3-1110. Exemption from state licensure by Division of Real Estate.**

33 In accordance with Section 61-2-3, an employee of a municipality is exempt from
34 licensure under Title 61, Chapter 2, Division of Real Estate:

35 (1) when engaging in an act on behalf of the municipality in accordance with:

36 (a) this title [~~and~~]; or

37 (b) Title 11, Cities, Counties, and Local Taxing Units; and

38 (2) if the act described in Subsection (1) is related to one or more of the following [~~is~~
39 ~~exempt from licensure under Title 61, Chapter 2, Division of Real Estate~~]:

40 [~~(1)~~] (a) acquiring real property, including by eminent domain;

41 [~~(2)~~] (b) disposing of real property; [~~or~~]

42 [~~(3)~~] (c) providing services that constitute property management, as defined in Section
43 61-2-2[~~;~~]; or

44 (d) leasing real property.

45 Section 2. Section 17-50-106 is enacted to read:

46 **17-50-106. Exemption from state licensure by Division of Real Estate.**

47 In accordance with Section 61-2-3, an employee of a county is exempt from licensure
48 under Title 61, Chapter 2, Division of Real Estate:

49 (1) when engaging in an act on behalf of the county in accordance with:

50 (a) this title; or

51 (b) Title 11, Cities, Counties, and Local Taxing Units; and

52 (2) if the act described in Subsection (1) is related to one or more of the following:

53 (a) acquiring real property, including by eminent domain;

54 (b) disposing of real property;

55 (c) providing services that constitute property management, as defined in Section
56 61-2-2; or

57 (d) leasing real property.

58 Section 3. Section 61-2-3 is amended to read:

59 **61-2-3. Exempt persons and transactions.**

60 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
61 required for:

62 (i) ~~any~~ a person who as owner or lessor performs the acts described in Subsection
63 61-2-2 (12) with reference to property owned or leased by that person;

64 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
65 to nonresidential real estate owned or leased by the employer, performs the acts enumerated in
66 Subsections 61-2-2(12)(a) and (b);

67 (iii) a regular salaried employee of the owner of real estate who performs property
68 management services with reference to real estate owned by the employer, except that the
69 employee may only manage property for one employer;

70 (iv) a person who performs property management services for the apartments at which
71 that person resides in exchange for free or reduced rent on that person's apartment;

72 (v) a regular salaried employee of a condominium homeowners' association who
73 manages real property subject to the declaration of condominium that established the
74 homeowners' association, except that the employee may only manage property for one
75 condominium homeowners' association; and

76 (vi) a regular salaried employee of a licensed property management company who
77 performs support services, as prescribed by rule, for the property management company.

78 (b) Subsection (1)(a) does not exempt from licensing:

79 (i) an employee engaged in the sale of properties regulated under:

80 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

81 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

82 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
83 Chapter 23, Real Estate Cooperative Marketing Act; or

84 (iii) ~~any~~ a person whose interest as an owner or lessor is obtained by that person or
85 transferred to that person for the purpose of evading the application of this chapter, and not for
86 any other legitimate business reason.

87 (2) A license under this chapter is not required for:

88 (a) an isolated transaction by a person holding a duly executed power of attorney from
89 the owner;

90 (b) services rendered by an attorney in performing the attorney's duties as an attorney;

91 (c) a receiver, trustee in bankruptcy, administrator, executor, or [any] a person acting
92 under order of any court;

93 (d) a trustee or employee of a trustee under a deed of trust or a will;

94 (e) [any] a public utility, officer of a public utility, or regular salaried employee of a
95 public utility, unless performance of any of the acts set out in Subsection 61-2-2(12) is in
96 connection with the sale, purchase, lease, or other disposition of real estate or investment in
97 real estate unrelated to the principal business activity of that public utility;

98 (f) a regular salaried employee of the Department of Transportation when performing
99 an act on behalf of the Department of Transportation in connection with one or more of the
100 following:

101 (i) the acquisition of real property pursuant to Section 72-5-103;

102 (ii) the disposal of real property pursuant to Section 72-5-111; or

103 (iii) services that constitute property management; or

104 (g) a regular salaried employee of a county, city, or town when performing an act on
105 behalf of the county, city, or town:

106 (i) in accordance with:

107 (A) if a regular salaried employee of a city or town:

108 (I) Title 10, Utah Municipal Code; [and] or

109 (II) Title 11, Cities, Counties, and Local Taxing Units; and

110 (B) if a regular salaried employee of a county:

111 (I) Title 11, Cities, Counties, and Local Taxing Units; and

112 (II) Title 17, Counties; and

113 (ii) in connection with one or more of the following:

114 (A) the acquisition of real property, including by eminent domain;

115 (B) the disposal of real property; [or]

116 (C) services that constitute property management[-]; or

117 (D) the leasing of real property.

118 (3) A license under this chapter is not required for [any] a person registered to act as a
119 broker-dealer, agent, or investment advisor under the Utah and federal securities laws in the
120 sale or the offer for sale of real estate if:

121 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
122 Securities Act of 1933 and the Securities Exchange Act of 1934; and

123 (ii) the security is registered for sale:

124 (A) pursuant to the Securities Act of 1933; or

125 (B) by Title 61, Chapter 1, Utah Uniform Securities Act; or

126 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
127 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
128 D, Rule 506, 17 C.F.R. Sec. 230.506; and

129 (ii) the selling agent and the purchaser are not residents of this state.

Legislative Review Note
as of 1-31-08 11:14 AM

Office of Legislative Research and General Counsel

H.B. 223 - Exemption from Licensure by Division of Real Estate

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. There could be some cost savings for local governments.
