

1 **TIMESHARE AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: Curtis S. Bramble

6
7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Timeshare and Camp Resort Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ addresses the process for obtaining a registration from the division for a
14 development or a salesperson;
- 15 ▶ modifies notice requirements related to a purchaser's right to cancel;
- 16 ▶ clarifies the process and standard for obtaining an exemption from the provisions of
17 this bill; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **57-8-3**, as last amended by Laws of Utah 2015, Chapters 22, 34, 213, 325, and 387

26 **57-8-27**, as last amended by Laws of Utah 2012, Chapter 166

27 **57-19-2**, as last amended by Laws of Utah 2012, Chapter 166



- 28 **57-19-4**, as enacted by Laws of Utah 1987, Chapter 73
- 29 **57-19-5**, as last amended by Laws of Utah 2009, Chapter 352
- 30 **57-19-6**, as last amended by Laws of Utah 2012, Chapter 166
- 31 **57-19-7**, as enacted by Laws of Utah 1987, Chapter 73
- 32 **57-19-8**, as last amended by Laws of Utah 2012, Chapter 166
- 33 **57-19-9**, as last amended by Laws of Utah 2000, Chapter 86
- 34 **57-19-10**, as enacted by Laws of Utah 1987, Chapter 73
- 35 **57-19-11**, as last amended by Laws of Utah 1991, Chapter 165
- 36 **57-19-12**, as last amended by Laws of Utah 2012, Chapter 166
- 37 **57-19-13**, as last amended by Laws of Utah 2012, Chapter 166
- 38 **57-19-14**, as last amended by Laws of Utah 2010, Chapter 379
- 39 **57-19-15**, as last amended by Laws of Utah 2009, Chapter 352
- 40 **57-19-16**, as last amended by Laws of Utah 2009, Chapter 352
- 41 **57-19-21**, as enacted by Laws of Utah 1987, Chapter 73
- 42 **57-19-26**, as last amended by Laws of Utah 2012, Chapter 166



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

45 Section 1. Section **57-8-3** is amended to read:

46 **57-8-3. Definitions.**

47 As used in this chapter:

- 48 (1) "Assessment" means any charge imposed by the association, including:
 - 49 (a) common expenses on or against a unit owner pursuant to the provisions of the
 - 50 declaration, bylaws, or this chapter; and
 - 51 (b) an amount that an association of unit owners assesses to a unit owner under
 - 52 Subsection **57-8-43(9)(g)**.
- 53 (2) "Association of unit owners" means all of the unit owners:
 - 54 (a) acting as a group in accordance with the declaration and bylaws; or
 - 55 (b) organized as a legal entity in accordance with the declaration.
- 56 (3) "Building" means a building, containing units, and comprising a part of the
- 57 property.
- 58 (4) "Commercial condominium project" means a condominium project that has no

59 residential units within the project.

60 (5) "Common areas and facilities" unless otherwise provided in the declaration or
61 lawful amendments to the declaration means:

62 (a) the land included within the condominium project, whether leasehold or in fee
63 simple;

64 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
65 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

66 (c) the basements, yards, gardens, parking areas, and storage spaces;

67 (d) the premises for lodging of janitors or persons in charge of the property;

68 (e) installations of central services such as power, light, gas, hot and cold water,
69 heating, refrigeration, air conditioning, and incinerating;

70 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
71 apparatus and installations existing for common use;

72 (g) such community and commercial facilities as may be provided for in the
73 declaration; and

74 (h) all other parts of the property necessary or convenient to its existence, maintenance,
75 and safety, or normally in common use.

76 (6) "Common expenses" means:

77 (a) all sums lawfully assessed against the unit owners;

78 (b) expenses of administration, maintenance, repair, or replacement of the common
79 areas and facilities;

80 (c) expenses agreed upon as common expenses by the association of unit owners; and

81 (d) expenses declared common expenses by this chapter, or by the declaration or the
82 bylaws.

83 (7) "Common profits," unless otherwise provided in the declaration or lawful
84 amendments to the declaration, means the balance of all income, rents, profits, and revenues
85 from the common areas and facilities remaining after the deduction of the common expenses.

86 (8) "Condominium" means the ownership of a single unit in a multiunit project
87 together with an undivided interest in common in the common areas and facilities of the
88 property.

89 (9) "Condominium plat" means a plat or plats of survey of land and units prepared in

90 accordance with Section [57-8-13](#).

91 (10) "Condominium project" means a real estate condominium project; a plan or
92 project whereby two or more units, whether contained in existing or proposed apartments,
93 commercial or industrial buildings or structures, or otherwise, are separately offered or
94 proposed to be offered for sale. Condominium project also means the property when the
95 context so requires.

96 (11) "Condominium unit" means a unit together with the undivided interest in the
97 common areas and facilities appertaining to that unit. Any reference in this chapter to a
98 condominium unit includes both a physical unit together with its appurtenant undivided interest
99 in the common areas and facilities and a time period unit together with its appurtenant
100 undivided interest, unless the reference is specifically limited to a time period unit.

101 (12) "Contractible condominium" means a condominium project from which one or
102 more portions of the land within the project may be withdrawn in accordance with provisions
103 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or
104 termination of one or more leases, then the condominium project is not a contractible
105 condominium within the meaning of this chapter.

106 (13) "Convertible land" means a building site which is a portion of the common areas
107 and facilities, described by metes and bounds, within which additional units or limited common
108 areas and facilities may be created in accordance with this chapter.

109 (14) "Convertible space" means a portion of the structure within the condominium
110 project, which portion may be converted into one or more units or common areas and facilities,
111 including limited common areas and facilities in accordance with this chapter.

112 (15) "Declarant" means all persons who execute the declaration or on whose behalf the
113 declaration is executed. From the time of the recordation of any amendment to the declaration
114 expanding an expandable condominium, all persons who execute that amendment or on whose
115 behalf that amendment is executed shall also come within this definition. Any successors of
116 the persons referred to in this subsection who come to stand in the same relation to the
117 condominium project as their predecessors also come within this definition.

118 (16) "Declaration" means the instrument by which the property is submitted to the
119 provisions of this act, as it from time to time may be lawfully amended.

120 (17) "Electrical corporation" means the same as that term is defined in Section [54-2-1](#).

121 (18) "Expandable condominium" means a condominium project to which additional
122 land or an interest in it may be added in accordance with the declaration and this chapter.

123 (19) "Gas corporation" means the same as that term is defined in Section 54-2-1.

124 (20) "Governing documents":

125 (a) means a written instrument by which an association of unit owners may:

126 (i) exercise powers; or

127 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
128 association of unit owners; and

129 (b) includes:

130 (i) articles of incorporation;

131 (ii) bylaws;

132 (iii) a plat;

133 (iv) a declaration of covenants, conditions, and restrictions; and

134 (v) rules of the association of unit owners.

135 (21) "Independent third party" means a person that:

136 (a) is not related to the unit owner;

137 (b) shares no pecuniary interests with the unit owner; and

138 (c) purchases the unit in good faith and without the intent to defraud a current or future
139 lienholder.

140 (22) "Leasehold condominium" means a condominium project in all or any portion of
141 which each unit owner owns an estate for years in his unit, or in the land upon which that unit
142 is situated, or both, with all those leasehold interests to expire naturally at the same time. A
143 condominium project including leased land, or an interest in the land, upon which no units are
144 situated or to be situated is not a leasehold condominium within the meaning of this chapter.

145 (23) "Limited common areas and facilities" means those common areas and facilities
146 designated in the declaration as reserved for use of a certain unit or units to the exclusion of the
147 other units.

148 (24) "Majority" or "majority of the unit owners," unless otherwise provided in the
149 declaration or lawful amendments to the declaration, means the owners of more than 50% in
150 the aggregate in interest of the undivided ownership of the common areas and facilities.

151 (25) "Management committee" means the committee as provided in the declaration

152 charged with and having the responsibility and authority to make and to enforce all of the
153 reasonable rules covering the operation and maintenance of the property.

154 (26) (a) "Means of electronic communication" means an electronic system that allows
155 individuals to communicate orally in real time.

156 (b) "Means of electronic communication" includes:

157 (i) web conferencing;

158 (ii) video conferencing; and

159 (iii) telephone conferencing.

160 (27) "Meeting" means a gathering of a management committee, whether in person or
161 by means of electronic communication, at which the management committee can take binding
162 action.

163 (28) "Mixed-use condominium project" means a condominium project that has both
164 residential and commercial units in the condominium project.

165 (29) "Par value" means a number of dollars or points assigned to each unit by the
166 declaration. Substantially identical units shall be assigned the same par value, but units located
167 at substantially different heights above the ground, or having substantially different views, or
168 having substantially different amenities or other characteristics that might result in differences
169 in market value, may be considered substantially identical within the meaning of this
170 subsection. If par value is stated in terms of dollars, that statement may not be considered to
171 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
172 fair market transaction at a different figure may affect the par value of any unit, or any
173 undivided interest in the common areas and facilities, voting rights in the unit owners'
174 association, liability for common expenses, or right to common profits, assigned on the basis
175 thereof.

176 (30) "Period of administrative control" means the period of control described in
177 Subsection [57-8-16.5\(1\)](#).

178 (31) "Person" means an individual, corporation, partnership, association, trustee, or
179 other legal entity.

180 (32) "Property" means the land, whether leasehold or in fee simple, the building, if any,
181 all improvements and structures thereon, all easements, rights, and appurtenances belonging
182 thereto, and all articles of personal property intended for use in connection therewith.

183 (33) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title
184 57, Chapter 3, Recording of Documents.

185 (34) "Size" means the number of cubic feet, or the number of square feet of ground or
186 floor space, within each unit as computed by reference to the record of survey map and rounded
187 off to a whole number. Certain spaces within the units including attic, basement, or garage
188 space may be omitted from the calculation or be partially discounted by the use of a ratio, if the
189 same basis of calculation is employed for all units in the condominium project and if that basis
190 is described in the declaration.

191 (35) "Time period unit" means an annually recurring part or parts of a year specified in
192 the declaration as a period for which a unit is separately owned and includes a timeshare estate
193 as defined in [~~Subsection 57-19-2(19)~~] Section 57-19-2.

194 (36) "Unit" means either a separate physical part of the property intended for any type
195 of independent use, including one or more rooms or spaces located in one or more floors or
196 part or parts of floors in a building or a time period unit, as the context may require. A
197 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
198 proposed condominium unit under an expandable condominium project, not constructed, is a
199 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

200 (37) "Unit number" means the number, letter, or combination of numbers and letters
201 designating the unit in the declaration and in the record of survey map.

202 (38) "Unit owner" means the person or persons owning a unit in fee simple and an
203 undivided interest in the fee simple estate of the common areas and facilities in the percentage
204 specified and established in the declaration or, in the case of a leasehold condominium project,
205 the person or persons whose leasehold interest or interests in the condominium unit extend for
206 the entire balance of the unexpired term or terms.

207 Section 2. Section 57-8-27 is amended to read:

208 **57-8-27. Separate taxation.**

209 (1) Each unit and its percentage of undivided interest in the common or community
210 areas and facilities shall be considered to be a parcel and shall be subject to separate
211 assessment and taxation by each assessing unit, local district, and special service district for all
212 types of taxes authorized by law, including ad valorem levies and special assessments. Neither
213 the building or buildings, the property, nor any of the common areas and facilities may be

214 considered a parcel.

215 (2) In the event any of the interests in real property made subject to this chapter by the
216 declaration are leasehold interests, if the lease creating these interests is of record in the office
217 of the county recorder, if the balance of the term remaining under the lease is at least 40 years
218 at the time the leasehold interest is made subject to this chapter, if units are situated or are to be
219 situated on or within the real property covered by the lease, and if the lease provides that the
220 lessee shall pay all taxes and assessments imposed by governmental authority, then until 10
221 years prior to the date that the leasehold is to expire or until the lease is terminated, whichever
222 first occurs, all taxes and assessments on the real property covered by the lease shall be levied
223 against the owner of the lessee's interest. If the owner of the reversion under the lease has
224 executed the declaration and condominium plat, until 10 years prior to the date that the
225 leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and
226 assessments on the real property covered by the lease shall be separately levied against the unit
227 owners having an interest in the lease, with each unit owner for taxation purposes being
228 considered the owner of a parcel consisting of his undivided condominium interest in the fee of
229 the real property affected by the lease.

230 (3) No forfeiture or sale of the improvements or the property as a whole for delinquent
231 real estate taxes, special assessments, or charges shall divest or in anywise affect the title to an
232 individual unit if the real estate taxes or duly levied share of the assessments and charges on the
233 individual unit are currently paid.

234 (4) Any exemption from taxes that may exist on real property or the ownership of the
235 property may not be denied by virtue of the submission of the property to this chapter.

236 (5) Timeshare interests and timeshare estates, as defined in ~~[Subsection]~~ Section
237 57-19-2~~(19)~~, may not be separately taxed but shall be valued, assessed, and taxed at the unit
238 level. The value of timeshare interests and timeshare estates, for purposes of ad valorem
239 taxation, shall be determined by valuing the real property interest associated with the timeshare
240 interest or timeshare estate, exclusive of the value of any intangible property and rights
241 associated with the acquisition, operation, ownership, and use of the timeshare interest or
242 timeshare estate, including the fees and costs associated with the sale of timeshare interests and
243 timeshare estates that exceed those fees and costs normally incurred in the sale of other similar
244 properties, the fees and costs associated with the operation, ownership, and use of timeshare

245 interests and timeshare estates, vacation exchange rights, vacation conveniences and services,
 246 club memberships, and any other intangible rights and benefits available to a timeshare unit
 247 owner. Nothing in this section shall be construed as requiring the assessment of any real
 248 property interest associated with a timeshare interest or timeshare estate at less than its fair
 249 market value. Notice of assessment, delinquency, sale, or any other purpose required by law is
 250 considered sufficient for all purposes if the notice is given to the management committee.

251 Section 3. Section **57-19-2** is amended to read:

252 **57-19-2. Definitions.**

253 As used in this chapter~~[-, unless the context clearly requires otherwise]:~~

254 (1) ~~["Accommodations" includes]~~ "Accommodation" means:

255 (a) a hotel or motel [rooms,] room;

256 (b) a condominium or cooperative [units, cabins, lodges, apartments, and] unit;

257 (c) a cabin;

258 (d) a lodge;

259 (e) an apartment; or

260 (f) a private or commercial [structures] structure designed for overnight occupancy by
 261 one or more individuals.

262 (2) "Advertisement" means a written, printed, oral, audio, electronic, or visual offer
 263 that:

264 (a) is made by direct or general solicitation[-] to one or more individuals; and

265 (b) (i) contains an offer to sell an interest; or

266 (ii) contains a solicitation to visit or obtain additional information about a
 267 development.

268 (3) "Amendment" means a change to an approved registration that is required under
 269 Section 57-19-9 or by a division rule made under this chapter.

270 ~~[(3)]~~ (4) "Association" means an organized body consisting solely of owners of
 271 timeshare interests in a timeshare development [that has been registered with the division],
 272 including developers or purchasers.

273 ~~[(4)]~~ (5) "Business day" means a day other than a Saturday, Sunday, or state or federal
 274 holiday.

275 ~~[(7)]~~ (6) "Camping site" means a space designed or promoted for the purpose of

276 locating a trailer, tent, tent trailer, recreational vehicle, pickup camper, motor home, or other
277 similar device used for land-based portable housing.

278 ~~[(5)]~~ (7) "Camp resort" means ~~[any]~~ an enterprise that has as its primary purpose the
279 offering of a camp resort interest.

280 ~~[(6)]~~ (8) "Camp resort interest" means the right to use and occupy a camping site.

281 (9) "Consolidation" means the registration of one or more additional sites or interests
282 in a development after the division approves the development's registration.

283 ~~[(8)]~~ (10) "Developer" means a person ~~[who]~~ that:

284 (a) establishes, ~~[promotes;]~~ owns, offers, sells, or operates a timeshare development or
285 camp resort; or

286 (b) engages one or more other persons to establish, ~~[promote]~~ own, offer, sell, or
287 operate a timeshare development or camp resort on the person's behalf.

288 (11) (a) "Development" means an enterprise with the primary purpose of offering an
289 interest in a camp resort or timeshare development.

290 (b) "Development" includes:

291 (i) a single-site development; or

292 (ii) a multiple-site development.

293 ~~[(9)]~~ (12) "Director" means the director of the division.

294 (13) "Direct sales presentation" means an in-person, telephonic, or Internet-based
295 communication that presents an offer to purchase an interest in a development to one or more
296 prospective purchasers.

297 ~~[(10)]~~ (14) "Division" means the Division of Real Estate of the Department of
298 Commerce.

299 ~~[(11)]~~ (15) "Executive director" means the executive director of the Department of
300 Commerce.

301 ~~[(12)]~~ (16) (a) "Interest" means ~~[a camp resort interest or a timeshare interest.]~~ a right
302 that a purchaser receives in exchange for consideration to use and occupy a camping site or an
303 accommodation in a development:

304 (i) on a recurring basis; and

305 (ii) for a period of time that is less than one year during any given year, regardless of
306 whether the time is determined in advance.

307 (b) "Interest" includes a membership agreement, sale, lease, deed, license, or
308 right-to-use agreement.

309 ~~[(13)]~~ (17) "Offer" means a solicitation solely intended to result in a person purchasing
310 an interest in a [project] development.

311 ~~[(14) "Project" means a camp resort or timeshare development.]~~

312 (18) "Property report" means the form of a written disclosure described in Section
313 57-19-11.

314 ~~[(15)]~~ (19) "Purchaser" means a person who purchases an interest in a [project]
315 development.

316 (20) "Registration" means:

317 (a) for a development, an approved application for registration described in Section
318 57-19-5; or

319 (b) for a salesperson, an approved application for registration described in Section
320 57-19-15.

321 (21) "Renewal" or "renew" means extending a development's or a salesperson's
322 registration for an additional period on or before the registration's expiration date.

323 ~~[(16)]~~ (22) (a) "Sale" or "sell" means selling an interest in a [project] development for
324 value. [It]

325 (b) "Sale" or "sell" does not include charging a reasonable fee to offset the
326 administrative costs of transferring an interest in a [project] development.

327 ~~[(17)]~~ (23) (a) "Salesperson" means an individual who, for compensation and as agent
328 for another, is engaged in obtaining commitments of persons to purchase an interest in a
329 [project] development by making direct sales presentations to those persons. [It]

330 (b) "Salesperson" does not include [purchasers] a purchaser or [members] an owner of
331 a timeshare interest engaged in the referral of persons without making a direct sales
332 presentation [to them].

333 (24) (a) "Site" means a geographic location where one or more camping sites or
334 accommodations are located.

335 (b) "Site" includes a geographic location where one or more camping sites or
336 accommodations are located that is constructed in phases and is under common management.

337 ~~[(18)]~~ (25) "Timeshare development" means [any] an enterprise [that has as its] with

338 ~~the~~ primary purpose ~~[the]~~ ~~of~~ offering ~~[of]~~ a timeshare interest, including ~~[a project in which the~~
 339 ~~purchase of]~~ an interest that gives the purchaser the right to use and occupy an accommodation
 340 at ~~[one specific site or more than one site]~~ a single- or multiple-site development.

341 (26) "Timeshare estate" means a small, undivided fractional fee interest in real property
 342 by which the purchaser does not receive any right to use an accommodation except as provided
 343 by contract, declaration, or other instrument defining a legal right.

344 ~~[(19)]~~ (27) (a) "Timeshare interest" means a right to occupy fixed or variable
 345 accommodations during three or more separate fixed or variable time periods over a period of
 346 at least three years, including renewal options, whether or not coupled with an estate in land.
 347 ~~[It]~~

348 (b) "Timeshare interest" includes [what is commonly known as a "] a timeshare
 349 estate[," which is a small undivided fractional fee interest in real property by which the
 350 purchaser does not receive any right to use accommodations except as provided by contract,
 351 declaration, or other instrument defining a legal right].

352 Section 4. Section **57-19-4** is amended to read:

353 **57-19-4. Unregistered sales prohibited.**

354 Except ~~[for transactions exempt under]~~ as provided in Section **57-19-26**, it is unlawful
 355 for ~~[any]~~ a person to offer or sell in this state an interest in a ~~[project]~~ development unless the
 356 ~~[project]~~ development is registered under this chapter or the person holds a temporary permit
 357 described in Section **57-19-6**.

358 Section 5. Section **57-19-5** is amended to read:

359 **57-19-5. Registration -- Filing application.**

360 (1) A person may apply for registration of a ~~[project]~~ development by filing with the
 361 ~~[director]~~ division:

362 (a) an application in the form prescribed by the director;

363 (b) the written disclosure ~~[required to be furnished to prospective purchasers by]~~
 364 described in Section **57-19-11**; and

365 (c) financial statements and other information that the director may by rule made in
 366 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as being
 367 reasonably necessary to determine whether the requirements of this chapter have been met and
 368 whether any of the events specified in Subsection **57-19-13(1)(g)** have occurred.

369 (2) ~~[Interests]~~ An interest in a [project which are] development that is encumbered by
370 ~~[liens, mortgages, or other encumbrances]~~ a lien, mortgage, or other encumbrance may not be
371 accepted for registration or offered ~~[for disposition]~~ to the public unless:

372 (a) adequate release or nondisturbance clauses are contained in the encumbering
373 instruments to reasonably assure that the purchaser's interest in the ~~[project]~~ development will
374 not be defeated; or

375 (b) the division ~~[has accepted]~~ accepts other equivalent assurances ~~[which]~~ that, in the
376 division's opinion ~~[of the division]~~, meet the purposes of this Subsection (2).

377 (3) (a) ~~[Each application]~~ A person who applies for a development registration ~~[of a~~
378 ~~project shall be accompanied by: (i)]~~ shall include with the application a filing fee of \$500 for
379 up to 100 interests, plus an additional \$3 per interest for each interest over 100, up to a
380 maximum of \$2,500 for each application~~[-and]~~.

381 ~~[(ii) subject to Subsection (3)(b), a deposit of \$300 to cover all on-site inspection costs~~
382 ~~and expenses incurred by the division.]~~

383 ~~[(b) (i) If the \$300 deposit is insufficient to meet the estimated costs and expenses of~~
384 ~~the on-site inspection, the applicant shall make an additional deposit sufficient to cover the~~
385 ~~estimated costs and expenses before the division will inspect the subdivided lands.]~~

386 ~~[(ii) The deposit shall be refunded to the extent it is not used, together with an itemized~~
387 ~~statement from the division of all amounts it has used.]~~

388 (b) If the division determines that an on-site inspection of the development is
389 necessary, the development shall pay the division the actual amount of the costs and expenses
390 incurred by the division in performing the on-site inspection.

391 ~~[(4) If a person registers additional interests to be offered for disposition, the person~~
392 ~~may consolidate the subsequent registration with any earlier registration offering interests for~~
393 ~~disposition in the same project]~~

394 (4) A person may add an additional site or interest to an approved development
395 registration by:

396 (a) filing an application for consolidation accompanied by an additional fee of \$200
397 plus \$3 for each additional interest, up to a maximum of \$1,250 for each application~~[-if at the~~
398 ~~time the person makes the application all of];~~ and

399 (b) providing the information required ~~[by]~~ under Subsection (1) ~~[has been brought~~

400 ~~current and covers the additional interests]~~ for each additional site or interest.

401 Section 6. Section **57-19-6** is amended to read:

402 **57-19-6. Effective date of application.**

403 (1) An application for registration filed pursuant to Section **57-19-5** is effective upon
404 the expiration of 30 business days following its filing with the director, unless:

- 405 (a) an order denying the application pursuant to Section **57-19-13** is in effect;
406 (b) a prior effective date has been ordered by the director; or
407 (c) the director has, ~~[prior to]~~ before that date, notified the applicant of a defect in the
408 registration application.

409 (2) An applicant ~~[may]~~ shall consent to the delay of effectiveness until the director by
410 order declares the registration to be effective.

411 (3) (a) Notwithstanding Section **57-19-4**, the division may grant a developer a
412 temporary permit [allowing the developer to begin a sales and marketing program while the
413 registration is in process.] that allows a developer to advertise, offer, or sell an interest:

- 414 (i) before the developer's application for registration is approved; and
415 (ii) for a period of 30 days or less.

416 (b) To obtain a temporary permit, the developer shall:

417 (i) submit an application to the division for a temporary permit in the form required by
418 the division;

419 (ii) submit a substantially complete application for registration to the division,
420 including all appropriate fees and exhibits required under Section **57-19-5**, plus a temporary
421 permit fee of \$100;

422 (iii) provide evidence acceptable to the division that all funds received by the
423 developer or marketing agent will be placed into an independent escrow with instructions that
424 funds will not be released until a final registration has been granted;

425 (iv) give to each purchaser and potential purchaser a copy of the proposed property
426 report that the developer has submitted to the division with the initial application; and

427 (v) give to each purchaser the opportunity to cancel the purchase in accordance with
428 Section **57-19-12**.

429 (c) ~~[A]~~ Upon the issuance of an approved registration, a purchaser shall have an
430 additional opportunity to cancel [upon the issuance of an approved registration] the purchase if

431 the division determines that there is a substantial difference in the disclosures contained in the
432 final property report and those given to the purchaser in the proposed property report.

433 (4) (a) Notwithstanding Section 57-19-4, a developer or a person acting on behalf of a
434 developer may market and accept a reservation and deposit from a prospective purchaser before
435 submitting to the division ~~[a]~~ an application for registration or a temporary permit ~~[application~~
436 ~~for a project]~~ if:

437 (i) the deposit is placed in a non-interest bearing escrow account with a licensed real
438 estate broker, a title company, or another escrow that the division approves in advance; and

439 (ii) the deposit is guaranteed to be fully refundable at any time at the request of the
440 prospective purchaser.

441 (b) A deposit that a prospective purchaser tenders under Subsection (4)(a) may not be
442 released to the developer until after:

443 (i) the division approves the ~~[project]~~ development's registration; and

444 (ii) the prospective purchaser executes a written purchase contract creating a binding
445 obligation to purchase.

446 Section 7. Section 57-19-7 is amended to read:

447 **57-19-7. Prior permits.**

448 Any permit to market a ~~[project]~~ development issued by the division ~~[prior to]~~ before
449 April 27, 1987, is considered to be an effective registration, but is subject to the renewal
450 provisions of this chapter upon the anniversary date of the issuance of the original permit.

451 Section 8. Section 57-19-8 is amended to read:

452 **57-19-8. Filing proposed documents.**

453 (1) Every developer shall file with the director at least five business days ~~[prior to]~~
454 before using any of the following in this state:

455 (a) the proposed form of ~~[its]~~ the developer's sales contracts; and

456 (b) ~~[copies]~~ a copy or the text of any supplements to the written disclosure required ~~[to~~
457 ~~be furnished to prospective purchasers pursuant to]~~ under Section 57-19-11.

458 (2) If the text, rather than ~~[copies]~~ a copy, of the materials ~~[specified]~~ described in
459 Subsection (1) ~~[are]~~ is filed, ~~[copies]~~ the developer shall file the copy, including an electronic
460 version, of ~~[these]~~ the materials ~~[shall be filed]~~ with the director within five business days
461 ~~[following the date]~~ after the day on which the materials are first used.

462 (3) ~~[The]~~ A developer shall notify the division within five ~~[working]~~ business days if
463 ~~[he]~~ the developer is convicted in any court of a crime involving fraud, deception, false
464 pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions,
465 or has been subject to any injunction or administrative order restraining a false or misleading
466 promotional plan involving land dispositions.

467 (4) ~~[The]~~ A developer ~~[must]~~ shall notify the division within five ~~[working]~~ business
468 days if the developer files a petition in bankruptcy or if any other event occurs ~~[which may~~
469 ~~have]~~ that could result in a material adverse effect on the [subdivision] development.

470 (5) (a) If any suit by or against a developer ~~[of a camp resort or timeshare~~
471 ~~development]~~ results in a court finding that the developer engaged in fraud, deception, false
472 pretenses, misrepresentation, false advertising, or dishonest dealing in a real estate transaction,
473 the developer shall promptly ~~[furnish]~~ give the division a copy of the final order, settlement
474 agreement, consent agreement, or other document evidencing resolution of the case at the trial
475 level, whether or not an appeal is anticipated.

476 (b) A developer's failure to comply with Subsection (5)(a) may, in the discretion of the
477 division, constitute grounds for the division withholding any approval ~~[required by]~~ under this
478 chapter.

479 Section 9. Section **57-19-9** is amended to read:

480 **57-19-9. Duration of registration -- Amendment and renewal -- Supplemental**
481 **disclosure -- Notice of amendment.**

482 (1) Registration of a ~~[project]~~ development is effective for a period of one year and
483 may, upon application, be renewed for successive periods of one year each.

484 (2) (a) A registration may be amended at any time, for any reason, by filing an
485 amended application for registration~~[, which]~~.

486 (b) ~~The~~ amended registration shall become effective in ~~[the manner provided in]~~
487 accordance with Section **57-19-6**.

488 ~~[(3) The written disclosure required to be furnished to prospective purchasers pursuant~~
489 ~~to Section 57-19-11]~~

490 (3) (a) The developer shall ~~[be supplemented]~~ supplement the property report as often
491 as is necessary to keep the required information reasonably current. ~~[These]~~

492 (b) The supplements described in Subsection (3)(a) shall be filed with the director ~~[as~~

493 ~~provided]~~ in accordance with Section 57-19-8.

494 (4) ~~[Every]~~ (a) A developer shall provide timely notice ~~[sent]~~ to the director of any
495 event ~~[which has occurred which may have]~~ that occurs that could result in a material adverse
496 effect on the conduct of the operation of the ~~[project]~~ development.

497 (b) In addition to ~~[this]~~ the notification described in Subsection (4)(a), the developer
498 shall, within 30 days ~~[of the occurrence of that]~~ after the day on which an event described in
499 Subsection (4)(a) occurs, file an amendment to the registration disclosing the information
500 previously provided.

501 (5) Each application for renewal of a registration and each supplementary filing ~~[as~~
502 ~~provided]~~ described in this section shall be accompanied by a fee of \$200.

503 Section 10. Section 57-19-10 is amended to read:

504 **57-19-10. Effect of application or registration -- Misleading statements to**
505 **prospective purchasers a misdemeanor.**

506 (1) Neither the fact that an application for registration or the written disclosures
507 required by this chapter have been filed, nor the fact that a ~~[project]~~ development has been
508 effectively registered or exempted, constitutes a finding by the director that the offering or any
509 document filed under this chapter is true, complete, and not misleading, nor does either of these
510 facts mean that the director has determined in any way the merits or qualifications of, or
511 recommended or given approval to, any person, developer, or transaction involving an interest
512 in a ~~[project]~~ development.

513 (2) It is a class A misdemeanor to make or cause to be made to any purchaser or
514 prospective purchaser any offering or document filed under this chapter ~~[which]~~ that is untrue,
515 incomplete, or misleading.

516 Section 11. Section 57-19-11 is amended to read:

517 **57-19-11. Disclosure required.**

518 (1) Except ~~[in a transaction exempt under]~~ as provided in Section 57-19-26, any person
519 who sells or offers to sell an interest in a ~~[project]~~ development located in this state, or who
520 sells or offers to sell in this state an interest in a ~~[project]~~ development located outside of this
521 state, shall provide to ~~[the]~~ a prospective purchaser, before the prospective purchaser signs an
522 agreement to purchase an interest in ~~[a project]~~ the development or gives any item of value for
523 the purchase of an interest in ~~[a project]~~ the development, a written statement ~~[which]~~ that

524 provides a full and fair disclosure of information regarding the [project] development and the
 525 purchaser's rights and obligations associated with the purchase of an interest in [a-project] the
 526 development.

527 (2) The written disclosure described in Subsection (1):

528 (a) may include electronic files; and

529 (b) shall:

530 (i) be on the property report form required by the division; and [shall]

531 (ii) include:

532 [(1)] (A) the name and address of the developer;

533 [(2)] (B) a statement regarding whether [or not] the developer has ever been[-(a)]

534 convicted of a felony[;] or any misdemeanor involving theft, fraud, or dishonesty[;], or [(b)]
 535 enjoined from, assessed any civil penalty for, or found to have engaged in the violation of any
 536 law designed to protect consumers;

537 [(3)] (C) a brief description of the developer's experience in timeshare, camp resort, or
 538 any other real estate development;

539 [(4)] (D) a brief description of the interest [which] that is being offered in the [project]
 540 development;

541 [(5)] (E) a description of any provisions to protect the purchaser's interest from loss
 542 due to foreclosure on any underlying financial obligation of the [project] development;

543 [(6)] (F) a statement [of the maximum number of interests in the project to be
 544 marketed, and a commitment that this maximum number will not be exceeded unless disclosed
 545 by filing an amendment to the registration as provided in Section 57-19-9 prior to the
 546 amendment becoming effective] that the development will not issue more interests during a
 547 12-month period than the development can accommodate during the 12-month period;

548 [(7)] (G) any event [which] that has occurred [as of] since the date of the offer [which]
 549 that may have a material adverse effect on the operation of the [project] development; and

550 [(8)] (H) any other information the director considers necessary for the protection of
 551 purchasers.

552 Section 12. Section **57-19-12** is amended to read:

553 **57-19-12. Purchaser's right to cancel.**

554 (1) (a) An agreement to purchase an interest in a [project] development may be

555 cancelled, at the option of the purchaser, if:

556 (i) the purchaser [~~provides~~] delivers a written notice of cancellation to the developer[;]
557 at the developer's business address by:

558 (A) hand [~~delivery~~]; or

559 (B) certified mail, [~~written notice of the cancellation~~] return receipt requested, or a
560 delivery service that provides proof of delivery; and

561 (ii) the notice is delivered or postmarked not later than midnight of the fifth business
562 day [~~following~~] after the day on which the agreement is signed.

563 (b) In computing the number of business days for purposes of this section, the day on
564 which the agreement was signed is not included.

565 (c) Within 30 days after [~~receipt of~~] the day on which the developer receives a timely
566 notice of cancellation, the developer shall refund any money or other consideration paid by the
567 purchaser.

568 (2) Every agreement to purchase an interest in a [~~project which~~] development that is
569 subject to this chapter shall include the following statement in at least 10-point bold upper-case
570 type, immediately preceding the space for the purchaser's signature:

571 "PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT
572 WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING
573 OR SENDING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR A
574 DELIVERY SERVICE THAT PROVIDES PROOF OF DELIVERY, WRITTEN NOTICE OF
575 CANCELLATION TO: (NAME AND ADDRESS OF DEVELOPER). THE NOTICE MUST
576 BE DELIVERED OR POSTMARKED BY MIDNIGHT OF THE FIFTH BUSINESS DAY
577 FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED. IN COMPUTING
578 THE NUMBER OF BUSINESS DAYS, THE DAY ON WHICH THE CONTRACT IS
579 SIGNED IS NOT INCLUDED."

580 Section 13. Section **57-19-13** is amended to read:

581 **57-19-13. Suspension, revocation, or denial of registration -- Fine.**

582 (1) Subject to Section **57-19-17**, [~~an application for registration of a project may be~~
583 ~~denied, an existing registration may be suspended or revoked, or a fine of not more than \$500~~
584 ~~may be imposed by the director, if the director finds that:] if the director finds that an applicant
585 or developer has engaged in an act described in Subsection (2), the director may:~~

- 586 (a) deny an application for registration of a development;
587 (b) suspend or revoke an existing registration; or
588 (c) except as provided in Subsection (3), impose a fine of not more than \$5,000.
589 (2) Subsection (1) applies if the director finds that:
590 (a) the developer's advertising or sales techniques or trade practices have been or are
591 deceptive, false, or misleading;
592 (b) the developer ~~[has failed]~~ fails to file ~~[copies]~~ a copy of ~~[its]~~ the developer's sales
593 contract forms as required ~~[by]~~ under Section 57-19-8;
594 (c) the developer ~~[has failed]~~ fails to comply with any provision of this chapter or ~~[the~~
595 ~~rules]~~ any rule adopted under this chapter that materially ~~[affect]~~ affects or would affect the
596 rights of ~~[purchasers or prospective purchasers]~~ a purchaser or prospective purchaser of an
597 interest in a ~~[project]~~ development, or that materially ~~[affect]~~ affects the administration of this
598 chapter;
599 (d) the ~~[developer's offering]~~ developer makes a fraudulent offer of an interest in a
600 ~~[project has worked or would work a fraud upon purchasers or prospective purchasers of such~~
601 ~~an]~~ development to a purchaser or prospective purchaser of the interest;
602 (e) the developer's application or any amendment to an application is incomplete in any
603 material respect;
604 (f) the developer's application or any amendment to an application contains material
605 misrepresentations or omissions of material fact ~~[which]~~ that are necessary to make the
606 statements contained in the application or amendment not misleading;
607 (g) the developer or any officer or director of the developer has been:
608 (i) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty;
609 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in ~~[the]~~ a
610 violation of any law designed to protect consumers; or
611 (iii) engaged in dishonest practices in any industry involving sales to consumers;
612 (h) the developer has represented or is representing to purchasers in connection with
613 the offer or sale of an interest in a ~~[project]~~ development that any accommodations, related
614 facilities, or amenities are planned, without reasonable grounds to believe that they will be
615 completed within a reasonable time;
616 (i) the developer ~~[has disposed of, concealed, or diverted]~~ disposes, conceals, or diverts

617 any funds or assets so as to defeat the rights of purchasers;

618 (j) the developer ~~[has failed]~~ fails to provide to ~~[purchasers copies]~~ a purchaser a copy
619 of the written disclosure required by Section 57-19-11; or

620 (k) the developer, the developer's successor in interest, or a managing association
621 discloses a purchaser's name, address, or email address to an unaffiliated entity without first
622 obtaining written consent from the purchaser, unless the disclosure is in response to a subpoena
623 or an order of a court or administrative tribunal.

624 ~~[(2)]~~ (3) The authority to impose ~~[fines as provided in]~~ a fine under this section does
625 not apply to Subsection ~~[(+)]~~ (2)(e).

626 ~~[(3)]~~ (4) Notwithstanding Subsection ~~[(+)]~~ (2)(k), a developer shall, upon request by
627 the division, provide the division a list of ~~[all purchasers' names, addresses, and email~~
628 ~~addresses]~~ each purchaser's name, address, and email address.

629 Section 14. Section 57-19-14 is amended to read:

630 **57-19-14. Registration of salesperson.**

631 ~~[(+)]~~ ~~Unless the transaction is exempt under]~~ Except as provided in Section 57-19-26, it
632 is unlawful for ~~[any]~~ a person to act as a salesperson ~~[marketing]~~ and market a ~~[project]~~
633 development in this state without first registering under this chapter as a salesperson.

634 ~~[(2)]~~ ~~The fee for registration as a salesperson is waived by the division for persons~~
635 ~~licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.]~~

636 Section 15. Section 57-19-15 is amended to read:

637 **57-19-15. Application for registration of salesperson.**

638 (1) A person may apply for registration as a salesperson under this chapter by filing
639 with the director an application in the form prescribed by the director, including:

640 (a) a statement ~~[of]~~ regarding whether ~~[or not]~~ the applicant has ever been:

641 (i) convicted of:

642 (A) a felony; or

643 (B) a misdemeanor involving theft, fraud, or dishonesty; or

644 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in the
645 violation of a law designed to protect a consumer;

646 (b) (i) a statement describing the applicant's employment history for the five years
647 immediately preceding the day on which the application is filed; and

648 (ii) a statement ~~[of]~~ regarding whether ~~[or not]~~ a termination of employment during the
649 period described in Subsection (1)(b)(i) is ~~[as]~~ a result of theft, fraud, or an act of dishonesty;
650 ~~[and]~~

651 (c) evidence of the applicant's honesty, integrity, truthfulness, and reputation; and
652 ~~[(c)]~~ (d) any other information that the director, by rule made in accordance with Title
653 63G, Chapter 3, Utah Administrative Rulemaking Act, considers necessary to protect [the
654 interests of a purchaser] a purchaser's interests.

655 (2) (a) Notwithstanding the requirements for a regulatory fee under Section 63J-1-504,
656 at the time an applicant files an application, the applicant shall pay to the division a fee of
657 \$100.

658 (b) The fee for registration described in Subsection (2)(a) is waived for a person
659 licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.

660 (3) (a) Registration as a salesperson is effective for ~~[a period for]~~ two years after the
661 day on which the registration is approved by the director, unless the director specifies
662 otherwise.

663 (b) To renew a registration, a salesperson shall:

- 664 (i) file a form prescribed by the director for that purpose; and
665 (ii) pay a renewal fee of \$100.

666 Section 16. Section **57-19-16** is amended to read:

667 **57-19-16. Denial, revocation, or suspension of registration of salesperson -- Fine.**

668 (1) Subject to Section 57-19-17, if the ~~[director]~~ division finds that an applicant or
669 salesperson has engaged in an act described in Subsection (2), the ~~[director]~~ division may:

- 670 (a) deny an application for registration as a salesperson;
671 (b) suspend or revoke an existing registration; or
672 (c) impose a civil penalty not to exceed ~~[\$500]~~ \$5,000.

673 (2) Subsection (1) applies if the ~~[director]~~ division finds that the applicant or
674 salesperson:

- 675 (a) files, or causes to be filed, with the ~~[director]~~ division a document that contains ~~[an]~~
676 untrue or misleading information;
677 (b) makes an untrue or misleading statement of material fact;
678 (c) fails to state a material fact that is necessary in order to make the statements made

679 not misleading in light of the circumstances under which the statements are made;

680 (d) employs a device, scheme, or artifice to defraud, or engages in an act, practice, or
681 course of business that operates or would operate as a fraud or deceit upon a person;

682 (e) subsequent to the effective date of registration as a salesperson, is:

683 (i) convicted of:

684 (A) a felony; or

685 (B) a misdemeanor involving theft, fraud, or dishonesty; or

686 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in a violation
687 of any law designed to protect consumers;

688 (f) violates this chapter;

689 (g) engages in an activity that constitutes dishonest dealing; or

690 (h) engages in unprofessional conduct as defined by statute or rule made by the
691 director.

692 Section 17. Section **57-19-21** is amended to read:

693 **57-19-21. Voidable agreements.**

694 (1) Any agreement to purchase an interest in a [~~project entered into in violation of~~]
695 development that violates Section 57-19-4 or 57-19-14 may, at the option of the purchaser, be
696 voided and the purchaser's entire consideration recovered together with interest at the legal rate,
697 costs, and reasonable [~~attorney's~~] attorney fees. [~~However, no~~]

698 (2) No suit under this section may be brought more than two years after the later of:

699 [(+)] (a) the [~~date~~] day on which the agreement is signed; or

700 [(2)] (b) the [~~date~~] day on which the purchaser knew or reasonably should have known
701 of the violation.

702 Section 18. Section **57-19-26** is amended to read:

703 **57-19-26. Exemptions.**

704 (1) Unless entered into for the purpose of evading the provisions of this chapter, the
705 following transactions are exempt from registration:

706 (a) an isolated [~~transactions~~] transaction by an owner of an interest in a [~~project~~]
707 development or by a person holding [~~such an~~] the owner's executed power of attorney;

708 (b) an offer or sale by a governmental entity; and

709 (c) [~~the~~] a resale of an interest that is:

- 710 (i) acquired:
- 711 (A) by the developer who initially registered the [project] development or by the
- 712 managing association of the [project] development; and
- 713 (B) through a foreclosure, quitclaim deed, deed in lieu of foreclosure, or equivalent
- 714 [transfer] means;
- 715 (ii) not offered as part of a [project] development that includes one or more interests
- 716 that are unregistered or have been registered by a different developer or as part of a different
- 717 [project] development; and
- 718 (iii) closed after the developer or managing association provides a purchaser the
- 719 disclosures required by Section 57-19-11 and the right to rescind required by Section 57-19-12.
- 720 (2) After a resale by a developer or managing association that is claimed to be exempt
- 721 under Subsection (1)(c), the division retains jurisdiction to:
- 722 (a) investigate a complaint regarding the resale; and
- 723 (b) if applicable, take an administrative action against the developer or managing
- 724 association on the basis of unprofessional conduct, [as provided] described in Section
- 725 57-19-13.
- 726 (3) (a) The director may, by rule made in accordance with Title 63G, Chapter 3, Utah
- 727 Administrative Rulemaking Act, or by order, exempt any person from any [or all requirements]
- 728 requirement of this chapter if the director finds that the offering of an interest in a [project]
- 729 development is essentially noncommercial.
- 730 (b) The offering of [one or more interests] an interest in a [project] development that
- 731 has [a maximum of] 10 or fewer interests is considered essentially noncommercial.
- 732 (c) A person who does not meet the requirements described in Subsection (3)(b), but
- 733 believes that a proposed offering of more than 10 interests in a development is essentially
- 734 noncommercial, may request an order of exemption from the director.
- 735 (d) To request an order of exemption under this section, a person shall submit to the
- 736 director a request for agency action in accordance with Section 63G-4-201.