

Chapter 56

Building Inspector and Factory Built Housing Licensing Act

58-56-1 Title.

This chapter is known as the "Building Inspector and Factory Built Housing Licensing Act."

Amended by Chapter 14, 2011 General Session

58-56-2 Chapter administration.

The provisions of this chapter shall be administered by the Division of Occupational and Professional Licensing.

Enacted by Chapter 269, 1989 General Session

58-56-3 Definitions.

In addition to the definitions in Section 58-1-102, definitions in the following sections apply to this chapter:

- (1) Section 15A-1-102;
- (2) Section 15A-1-202; and
- (3) Section 15A-1-302.

Amended by Chapter 14, 2011 General Session

58-56-8.5 Building Inspector Licensing Board.

- (1) There is created a Building Inspector Licensing Board consisting of four building inspectors and one member of the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 through 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
 - (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (b) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Enacted by Chapter 262, 1995 General Session

58-56-9 Qualifications of inspectors -- Contract for inspection services.

- (1) An inspector employed by a local regulator, state regulator, or compliance agency to enforce the codes shall:
 - (a)
 - (i) meet minimum qualifications as established by the division in collaboration with the commission;
 - (ii) be certified by a nationally recognized organization which promulgates construction codes;
 - or

- (iii) pass an examination developed by the division in collaboration with the commission;
 - (b) be currently licensed by the division as meeting those minimum qualifications; and
 - (c) be subject to revocation or suspension of the inspector's license or being placed on probation if found guilty of unlawful or unprofessional conduct.
- (2) A local regulator, state regulator, or compliance agency may contract for the services of a licensed inspector not regularly employed by the regulator or agency.

Amended by Chapter 14, 2011 General Session

58-56-9.1 Unlawful conduct.

Unlawful conduct is as defined in Subsection 58-1-501(1) and includes:

- (1) engaging in the sale of factory built housing without being registered with the division as a dealer, unless the sale is exempt under Section 58-56-16;
- (2) selling factory built housing within the state as a dealer without collecting and remitting to the division the fee required by Section 58-56-17;
- (3) acting as a building inspector or representing oneself to be acting as a building inspector, unless licensed or exempted from licensure under this chapter or using the title building inspector or any other description, words, letters, or abbreviation indicating that the person is a building inspector if the person has not been licensed under this chapter;
- (4) acting as a building inspector beyond the scope of the license held under this chapter; and
- (5) hiring or employing in any manner an unlicensed person as a building inspector, unless exempted from licensure under this chapter.

Enacted by Chapter 145, 2007 General Session

58-56-9.3 Unprofessional conduct.

Unprofessional conduct is as defined in Subsection 58-1-501(2) and includes:

- (1) knowingly failing to inspect or issue correction notices for code violations which when left uncorrected would constitute a hazard to the public health and safety and knowingly failing to require that correction notices are complied with as a building inspector;
- (2) the use of alcohol or the illegal use of drugs while performing duties as a building inspector or at any time to the extent that the inspector is physically or mentally impaired and unable to effectively perform the duties of an inspector;
- (3) gross negligence in the performance of official duties as a building inspector;
- (4) the personal use of information or knowingly revealing information to unauthorized persons when that information has been obtained by a building inspector as a result of the inspector's employment, work, or position as an inspector;
- (5) unlawful acts or practices which are clearly unethical under generally recognized standards of conduct of a building inspector;
- (6) engaging in fraud or knowingly misrepresenting a fact relating to the performance of duties and responsibilities as a building inspector;
- (7) a building inspector knowingly failing to require that all plans, specifications, drawings, documents, and reports be stamped by architects, professional engineers, or both as established by law;
- (8) a building inspector knowingly failing to report to the division an act or omission of a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when left uncorrected constitutes a hazard to public health and safety;

- (9) a building inspector knowingly failing to report to the division unlicensed practice persons who are required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act;
- (10) a building inspector's approval of work which materially varies from approved documents that have been stamped by an architect, professional engineer, or both unless authorized by the licensed architect, professional engineer, or both;
- (11) a building inspector failing to produce verification of current licensure and current certifications for the codes upon request of the division, a compliance agency, or a contractor or property owner whose work is being inspected;
- (12) nondelivery of goods or services by a registered dealer which constitutes a breach of contract by the dealer;
- (13) the failure of a registered dealer to pay a subcontractor or supplier any amounts to which that subcontractor or supplier is legally entitled; and
- (14) any other activity which is defined as unprofessional conduct by division rule in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 310, 2010 General Session

58-56-9.5 Penalty for unlawful conduct -- Citations.

- (1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.
- (2) Grounds for immediate suspension of a licensee's license by the division under this chapter include:
 - (a) the issuance of a citation for violation of a provision of Section 58-56-9.1; and
 - (b) failure by a licensee to make application to, report to, or notify the division with respect to a matter for which application, notification, or reporting is required under this chapter or rules made under this chapter by the division.
- (3)
 - (a) If upon inspection or investigation, the division concludes that a person has violated a provision of Section 58-56-9.1, or a rule or order issued with respect to that section, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:
 - (i) promptly issue a citation to the person according to this chapter and any pertinent rules;
 - (ii) attempt to negotiate a stipulated settlement; or
 - (iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
 - (b)
 - (i) A person who violates a provision of Section 58-56-9.1, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or instead of the fine, be ordered by the division to cease from violating the provision.
 - (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.
 - (c)
 - (i) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.

- (ii) The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.
 - (iii) The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.
 - (d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served:
 - (i) in accordance with the Utah Rules of Civil Procedure;
 - (ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or
 - (iii) by mail.
 - (e)
 - (i) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
 - (ii) The period to contest a citation may be extended by the division for cause.
 - (f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
 - (g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of a license.
 - (h) No citation may be issued under this section after the expiration of six months following the occurrence of the violation.
 - (i) The director or the director's designee may assess fines for violations of Section 58-56-9.1 as follows:
 - (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;
 - (ii) for a second offense, a fine of up to \$2,000; and
 - (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued offense.
 - (j) For the purposes of issuing a final order under this section and assessing a fine under Subsection (3)(i), an offense constitutes a second or subsequent offense if:
 - (i) the division previously issued a final order determining that a person committed a first or second offense in violation of a provision of Section 58-56-9.1; or
 - (ii)
 - (A) the division initiated an action for a first or second offense;
 - (B) no final order has been issued by the division in the action initiated under Subsection (3)(j)(ii)(A);
 - (C) the division determines during an investigation that occurred after the initiation of the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent violation of a provision of Section 58-56-9.1; and
 - (D) after determining that the person committed a second or subsequent offense under Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under Subsection (3)(j)(ii)(A).
 - (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j), the division shall comply with the requirements of this section.
- (4)
- (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the Commerce Service Account created by Section 13-1-2.
 - (b) The director may collect an unpaid fine by:

- (i) referring the matter to a collection agency; or
 - (ii) bringing an action in the district court of the county in which the person resides or in the county where the director's office is located.
- (c)
- (i) The state's attorney general or a county attorney shall provide legal assistance and advice to the director in an action brought under Subsection (4)(b).
 - (ii) Reasonable attorney fees and costs shall be awarded in an action brought to enforce the provisions of this section.

Amended by Chapter 278, 2010 General Session

58-56-15.1 Factory built housing set-up contractor license.

- (1) The scope of the work included under a factory built housing set-up contractor license includes:
 - (a) the placement or securing, or both placement and securing, of the factory built housing on a permanent or temporary foundation;
 - (b) securing units together, if required; and
 - (c) connection of the utilities to a factory built housing unit.
- (2) The scope of work included under a factory built housing set-up contractor license does not include:
 - (a) site preparation;
 - (b) construction of a permanent foundation; and
 - (c) construction of utility services to the near proximity of the factory built housing unit.
- (3) If a dealer is not licensed as a factory built housing set-up contractor, that individual must subcontract the connection services to an individual who is licensed by the division to perform those specific functions under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Enacted by Chapter 14, 2011 General Session

58-56-16 Registration of dealers -- Bonding requirements -- Renewal -- Exemptions -- Discipline.

- (1) Each person engaged in the sale of factory built housing in the state, except as provided in Subsection (4), shall register with the division as a dealer.
- (2) Each applicant for registration under this section shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63J-1-504; and
 - (c) provide the division with a registration bond in accordance with rules established by the division.
- (3)
 - (a) The division shall issue each registration under this section in accordance with a two-year renewal cycle established by rule.
 - (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
 - (c) Each registration under this section automatically expires on the expiration date on the certificate of registration unless the registrant renews it in accordance with Section 58-1-308.
- (4) Subsection (1) does not apply to:
 - (a) a person not regularly engaged in the sale of factory built housing who is selling a unit the person owns for the person's own account;

- (b) a principal broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or
 - (c) a sales agent or associate broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, who sells factory built housing as an agent for, and under the supervision of, the principal broker with whom the sales agent or associate broker is affiliated.
- (5) Grounds for refusing to issue a registration, for refusing to renew a registration, for revoking, suspending, restricting, or placing on probation a registration, for issuing a public or private reprimand to a registrant, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Amended by Chapter 379, 2010 General Session

58-56-17 Fees on sale -- Escrow agents -- Sales tax.

- (1) A dealer shall collect and remit a fee of \$25 to the division for each factory built home the dealer sells that, as of the date of the sale, has not been permanently affixed to real property and converted to real property as provided in Section 70D-2-401. The fee shall be payable within 30 days following the close of each calendar quarter for all units sold during that calendar quarter. The fee shall be deposited in a restricted account as provided in Section 58-56-17.5.
- (2) A principal real estate broker, associate broker, or sales agent exempt from registration as a dealer under Section 58-56-16 who sells a factory built home that has not been permanently affixed to real property shall close the sale only through a qualified escrow agent in this state registered with the Insurance Department or the Department of Financial Institutions.
- (3) An escrow agent through which a sale is closed under Subsection (2) shall remit all required sales tax to the state.

Amended by Chapter 262, 2013 General Session

58-56-17.5 Factory Built Housing Fees Restricted Account.

- (1) There is created within the General Fund a restricted account known as "Factory Built Housing Fees Account."
- (2)
 - (a) The restricted account shall be funded from the fees the dealer collects and remits to the division for each factory built home the dealer sells as provided in Subsection 58-56-17(1).
 - (b) The division shall deposit all money collected under Subsection 58-56-17(1) in the restricted account.
 - (c) The restricted account shall be used to pay for education and enforcement of this chapter and Title 15A, Chapter 1, Part 3, Factory Built Housing and Modular Units Administration Act, including investigations and administrative actions and the funding of additional employees to the amount of the legislative appropriation.
 - (d) The restricted account may accrue interest which shall be deposited into the restricted account.

Amended by Chapter 14, 2011 General Session