

Chapter 2 Division of Real Estate

Part 1 General Provisions

61-2-101 Title.

This chapter is known as the "Division of Real Estate."

Enacted by Chapter 379, 2010 General Session

61-2-102 Definitions.

As used in this chapter:

- (1) "Department" means the Department of Commerce.
- (2) "Director" means the director of the division appointed under Section 61-2-201.
- (3) "Division" means the Division of Real Estate created in Section 61-2-201.
- (4) "Executive director" means the executive director of the department appointed under Section 13-1-3.

Enacted by Chapter 379, 2010 General Session

Part 2 Organization

61-2-201 Division of Real Estate created -- Director appointed -- Personnel.

- (1) There is created within the department a Division of Real Estate. The division is responsible for the administration and enforcement of:
 - (a) this chapter;
 - (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
 - (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
 - (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
 - (e) Title 57, Chapter 29, Undivided Fractionalized Long-Term Estate Sales Practices Act;
 - (f) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;
 - (g) Chapter 2e, Appraisal Management Company Registration and Regulation Act;
 - (h) Chapter 2f, Real Estate Licensing and Practices Act; and
 - (i) Chapter 2g, Real Estate Appraiser Licensing and Certification Act.
- (2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds the office of director at the pleasure of the governor.
- (3) The director, with the approval of the executive director, may employ personnel necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Administrative Services.

Amended by Chapter 381, 2016 General Session

61-2-202 Powers and duties of the director or division.

- (1) On or before October 1 of each year, in conjunction with the department, the director shall report to the governor and the Legislature concerning the division's work for the fiscal year immediately preceding the report.
- (2) In conjunction with the executive director, the director shall prepare and submit to the governor and the Legislature a budget for the fiscal year that follows the convening of the Legislature.

Enacted by Chapter 379, 2010 General Session

61-2-203 Adjudicative proceedings -- Citation authority.

- (1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding under a chapter the division administers.
- (2) The division may initiate an adjudicative proceeding through:
 - (a) a citation, pursuant to Subsection (3);
 - (b) a notice of agency action; or
 - (c) a notice of formal or informal proceeding.
- (3) In addition to any other statutory penalty for a violation related to an occupation or profession regulated under this title, the division may issue a citation to a person who, upon inspection or investigation, the division concludes to have violated:
 - (a) Subsection 61-2c-201(1), which requires licensure;
 - (b) Subsection 61-2c-201(4), which requires entity licensure;
 - (c) Subsection 61-2c-205(3), which requires notification of a change in specified information regarding a licensee;
 - (d) Subsection 61-2c-205(4), which requires notification of specified legal actions;
 - (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division within the required time period;
 - (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the division;
 - (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
 - (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading advertising;
 - (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed work if unlicensed;
 - (j) Subsection 61-2e-201(1), which requires registration;
 - (k) Subsection 61-2e-203(4), which requires a notification of a change in ownership;
 - (l) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;
 - (m) Subsection 61-2e-401(1)(b), which prohibits failure to respond to a request by the division;
 - (n) Subsection 61-2f-201(1), which requires licensure;
 - (o) Subsection 61-2f-206(1), which requires entity registration;
 - (p) Subsection 61-2f-301(1), which requires notification of a specified legal action;
 - (q) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;
 - (r) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated with a principal broker;
 - (s) Subsection 61-2f-401(9), which prohibits failing to keep specified records for inspection by the division;
 - (t) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive advertising;
 - (u) Subsection 61-2f-401(20), which prohibits failing to respond to a division request;
 - (v) Subsection 61-2g-301(1), which requires licensure;
 - (w) Subsection 61-2g-405(3), which requires making records required to be maintained available to the division;
 - (x) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;

- (y) a rule made pursuant to any Subsection listed in this Subsection (3);
 - (z) an order of the division; or
 - (aa) an order of the commission or board that oversees the person's profession.
- (4)
- (a) In accordance with Subsection (9), the division may assess a fine against a person for a violation of a provision listed in Subsection (3), as evidenced by:
 - (i) an uncontested citation;
 - (ii) a stipulated settlement; or
 - (iii) a finding of a violation in an adjudicative proceeding.
 - (b) The division may, in addition to or in lieu of a fine under Subsection (4)(a), order the person to cease and desist from an activity that violates a provision listed in Subsection (3).
- (5) Except as provided in Subsection (7)(d), the division may not use a citation to effect a license:
- (a) denial;
 - (b) probation;
 - (c) suspension; or
 - (d) revocation.
- (6)
- (a) A citation issued by the division shall:
 - (i) be in writing;
 - (ii) describe with particularity the nature of the violation, including a reference to the provision of the statute, rule, or order alleged to have been violated;
 - (iii) 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; and
 - (iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time period specified in the citation.
 - (b) The division may issue a notice in lieu of a citation.
- (7)
- (a) A citation becomes final:
 - (i) if within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation; or
 - (ii) if the director or the director's designee conducts a hearing pursuant to a timely request for a hearing and issues an order finding that a violation has occurred.
 - (b) The 20-day period to contest a citation may be extended by the division for cause.
 - (c) A citation that becomes the final order of the division due to a person's failure to timely request a hearing is not subject to further agency review.
 - (d)
 - (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after the citation becomes final.
 - (ii) The failure of a license applicant to comply with a citation after the citation becomes final is a ground for denial of the license application.
- (8)
- (a) The division may not issue a citation under this section after the expiration of six months following the occurrence of a violation.
 - (b) The division may issue a notice to address a violation that is outside of the six-month citation period.
- (9) The director or the director's designee shall assess a fine with a citation in an amount that is no more than:

- (a) for a first offense, \$1,000;
- (b) for a second offense, \$2,000; and
- (c) for each offense subsequent to a second offense, \$2,000 for each day of continued offense.

(10)

- (a) An action for a first or second offense for which the division has not issued final order does not preclude the division from initiating a subsequent action for a second or subsequent offense while the preceding action is pending.
- (b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(11)

- (a) If a person does not pay a penalty, the director may collect the unpaid penalty by:
 - (i) referring the matter to a collection agency; or
 - (ii) bringing an action in the district court of the county:
 - (A) where the person resides; or
 - (B) where the office of the director is located.
- (b) A county attorney or the attorney general of the state shall provide legal services to the director in an action to collect the penalty.
- (c) A court may award reasonable attorney fees and costs to the division in an action brought by the division to enforce the provisions of this section.

Amended by Chapter 384, 2016 General Session

61-2-204 Utah Housing Opportunity Restricted Account.

- (1) For purposes of this section, "account" means the Utah Housing Opportunity Restricted Account created by this section.
- (2) There is created in the General Fund a restricted account known as the "Utah Housing Opportunity Restricted Account."
- (3) The account shall be funded by:
 - (a) contributions deposited into the account in accordance with Section 41-1a-422;
 - (b) private contributions; and
 - (c) donations or grants from public or private entities.
- (4)
 - (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.
 - (b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.
- (5) The Legislature shall appropriate money in the account to the division.
- (6) The division shall distribute the money in the account to one or more charitable organizations that:
 - (a) are tax exempt under Section 501(c)(3), Internal Revenue Code; and
 - (b) have as a primary part of their mission to provide support to organizations that create affordable housing for those in severe need.
- (7) The division may consider a proposal only if it is:
 - (a) proposed by an organization described in Subsection (6); and
 - (b) designed to provide support to organizations that create affordable housing for those in severe need.
- (8)

- (a) An organization described in Subsection (6) may apply to the division to receive a distribution in accordance with Subsection (6).
 - (b) An organization that receives a distribution from the division in accordance with Subsection (6) shall expend the distribution only to provide support to organizations that create affordable housing for those in severe need.
- (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules providing procedures for an organization to apply to receive money under this section.

Amended by Chapter 303, 2011 General Session

61-2-205 Concurrence.

- (1) If a provision under this title requires concurrence between the director or division and a commission or board created under this title and no concurrence can be reached, the director or division has final authority.
- (2) When this title requires concurrence between the director or division and a commission or board:
 - (a) the director or division shall report to and update the commission or board on a regular basis related to matters requiring concurrence; and
 - (b) the commission or board shall review the report submitted by the director or division under this Subsection (2) and concur with the report, or:
 - (i) provide a reason for not concurring with the report; and
 - (ii) provide recommendations to the director or division.

Enacted by Chapter 25, 2016 General Session