

REAL ESTATE LAW AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Alma Mansell

AN ACT RELATING TO REAL ESTATE; CHANGING THE DATE ON WHICH AN ORDER OF THE DIVISION OF REAL ESTATE BECOMES EFFECTIVE; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

61-2-12, as last amended by Chapter 146, Laws of Utah 1993

61-2-21, as last amended by Chapter 225, Laws of Utah 1989

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

Section 1. Section **61-2-12** is amended to read:

61-2-12. Disciplinary action -- Judicial review.

(1) (a) Before imposing an educational requirement, a civil penalty, revoking, suspending, placing on probation, or denying the renewal, reinstatement, or reissuance of any license or certificate based on violation of Section 61-2-11, the division shall give notice to the licensee or certificate holder and schedule an adjudicative proceeding.

(b) If the licensee is an active sales agent or active associate broker, the division shall inform the principal broker with whom the licensee is affiliated of the charge and of the time and place of the hearing.

(c) If after the hearing the commission determines that any licensee or certificate holder is guilty of a violation of this chapter, the license or certificate may be suspended, revoked, denied reissuance, or a civil penalty may be imposed by written order of the commission in concurrence with the director.

(2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the complainant, may obtain judicial review or agency review by the executive director of any adverse ruling, order, or decision of the director and the commission.

(b) If the applicant, certificate holder, or licensee prevails in the appeal and the court finds

that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, certificate holder, or licensee as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

(c) (i) ~~[No]~~ An order, rule, or decision of the director and the commission ~~[may]~~ shall take effect ~~[until the time for appeal to the court has expired]~~ and become operative 30 days after the service thereof unless otherwise provided in the order.

(ii) If an appeal is taken by a licensee, the division ~~[shall]~~ may stay enforcement of the commission's action in accordance with the provisions of Section 63-46b-18.

(iii) The appeal shall be governed by the Utah Rules of Appellate Procedure.

(3) The commission and the director shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

Section 2. Section **61-2-21** is amended to read:

61-2-21. Remedies and action for violations.

(1) (a) If the director has reason to believe that any person has been or is engaging in acts constituting violations of this chapter, and if it appears to the director that it would be in the public interest to stop such acts, he shall issue and serve upon the person an order directing that person to cease and desist from those acts.

(b) Within ten days after receiving the order, the person upon whom the order is served may request an adjudicative proceeding.

(c) Pending the hearing, the cease and desist order shall remain in effect.

(d) If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(2) (a) After the hearing, if the commission and the ~~[executive]~~ director agree that the acts of the person violate this chapter, the ~~[executive]~~ director shall issue an order making the cease and desist order permanent.

(b) If no hearing is requested and if the person fails to cease the acts, or after discontinuing the acts, again commences the acts, the ~~[executive]~~ director shall file suit in the name of the Department of Commerce and the Division of Real Estate, in the district court in the county in which

the acts occurred or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter.

(c) The district courts of this state shall have jurisdiction of these suits.

(3) The remedies and action provided in this section may not interfere with, or prevent the prosecution of, any other remedies or actions including criminal proceedings.