

1 **DIVISION OF REAL ESTATE -**
2 **DEFINITIONS AMENDMENTS**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: John L. Valentine**

6 **This act modifies the Securities Division - Real Estate Division section of the Utah Code.**
7 **The act establishes that a real estate sales agent may be engaged either as an independent**
8 **contractor or as an employee of a licensed principal real estate broker. The act**
9 **establishes that the relationship between a sales agent and broker is an independent**
10 **contractor relationship unless there is clear and convincing evidence that the relationship**
11 **was intended by the parties to be an employer employee relationship.**

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

13 AMENDS:

14 **61-2-2**, as last amended by Chapter 106, Laws of Utah 1997

15 ENACTS:

16 **61-2-25**, Utah Code Annotated 1953

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

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

19 **61-2-2. Definitions.**

20 As used in this chapter:

21 (1) "Associate real estate broker" and "associate broker" means any person employed
22 or engaged as an independent contractor by or on behalf of a licensed principal real estate
23 broker to perform any act set out in Subsection (12) for valuable consideration, who has
24 qualified under the provisions of this chapter as a principal real estate broker.

25 (2) "Branch office" means a principal broker's real estate brokerage office other than
26 his main office.

27 (3) "Commission" means the Real Estate Commission established under this chapter.



28 (4) "Concurrence" means the entities given a concurring role must jointly agree for
29 action to be taken.

30 (5) "Condominium" or "condominium unit" is as defined in Section 57-8-3.

31 (6) "Condominium homeowners' association" means all of the condominium unit
32 owners acting as a group in accordance with declarations and bylaws.

33 (7) (a) "Condominium hotel" means one or more condominium units that are operated
34 as a hotel.

35 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all
36 of which are owned by a single entity.

37 (8) "Director" means the director of the Division of Real Estate.

38 (9) "Division" means the Division of Real Estate.

39 (10) "Executive director" means the director of the Department of Commerce.

40 (11) "Main office" means the address which a principal broker designates with the
41 division as his primary brokerage office.

42 (12) "Principal real estate broker" and "principal broker" means any person:

43 (a) (i) who sells or lists for sale, buys, exchanges, or auctions real estate, options on
44 real estate, or improvements on real estate with the expectation of receiving valuable
45 consideration; or

46 (ii) who advertises, offers, attempts, or otherwise holds himself out to be engaged in
47 the business described in Subsection (12)(a)(i);

48 (b) employed by or on behalf of the owner of real estate or by a prospective purchaser
49 of real estate who performs any of the acts described in Subsection (12)(a), whether his
50 compensation is at a stated salary, a commission basis, upon a salary and commission basis, or
51 otherwise;

52 (c) who, with the expectation of receiving valuable consideration, manages property
53 owned by another person or who advertises or otherwise holds himself out to be engaged in
54 property management;

55 (d) who, with the expectation of receiving valuable consideration, assists or directs in
56 the procurement of prospects for or the negotiation of the transactions listed in Subsections
57 (12)(a) and (c); and

58 (e) except for mortgage lenders, title insurance agents, and their employees, who assists

59 or directs in the closing of any real estate transaction with the expectation of receiving valuable
60 consideration.

61 (13) (a) "Property management" means engaging in, with the expectation of receiving
62 valuable consideration, the management of property owned by another person or advertising or
63 otherwise claiming to be engaged in property management by:

64 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
65 participating in a transaction calculated to secure the rental or leasing of real estate;

66 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
67 estate and accounting for and disbursing the money collected; or

68 (iii) authorizing expenditures for repairs to the real estate.

69 (b) "Property management" does not include:

70 (i) hotel or motel management;

71 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
72 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
73 similar public accommodations for any period of less than 30 consecutive days, and the
74 management activities associated with these rentals; or

75 (iii) the leasing or management of surface or subsurface minerals or oil and gas
76 interests, if the leasing or management is separate from a sale or lease of the surface estate.

77 (14) "Real estate" includes leaseholds and business opportunities involving real
78 property.

79 (15) "Real estate sales agent" and "sales agent" [~~means~~] mean any person [~~employed or~~
80 ~~engaged as an independent contractor by or on behalf of~~] affiliated with a licensed principal
81 real estate broker, either as an independent contractor or an employee as provided in Section
82 61-2-25, to perform for valuable consideration any act set out in Subsection (12).

83 (16) (a) "Regular salaried employee" means an individual who performs a service for
84 wages or other remuneration, whose employer withholds federal employment taxes under a
85 contract of hire, written or oral, express or implied.

86 (b) "Regular salaried employee" does not include a person who performs services on a
87 project-by-project basis or on a commission basis.

88 (17) "Reinstatement" means restoring a license that has expired or has been suspended.

89 (18) "Reissuance" means the process by which a licensee may obtain a license

90 following revocation of the license.

91 (19) "Renewal" means extending a license for an additional licensing period on or
92 before the date the license expires.

93 Section 2. Section **61-2-25** is enacted to read:

94 **61-2-25. Sales agents -- Affiliated with broker as independent contractors or**
95 **employees -- Presumption.**

96 A sales agent may be affiliated with § ~~or engaged by~~ § a licensed principal real estate
97 broker either as an independent contractor or as an employee. The relationship between sales
98 agent and broker is presumed to be an independent contractor relationship unless there is clear
99 and convincing evidence that the relationship was intended by the parties to be an employer
100 employee relationship.

Legislative Review Note

as of 2-7-03 7:58 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0198

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11-Feb-03

10:17 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst