

**REAL ESTATE TRANSACTIONS AND
SECURITIES**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: L. Alma Mansell

House Sponsor: Gordon E. Snow

LONG TITLE

General Description:

This bill modifies the Utah Uniform Securities Act and Real Estate provisions to address certain real estate transactions.

Highlighted Provisions:

This bill:

- ▶ exempts certain real estate transactions from the definition of securities;
- ▶ exempts real estate brokers or agents from the definition of agent, broker-dealer, investment advisor, or investor adviser representative when the real estate broker or agent receives compensation in connection with an offer or sale;
- ▶ clarifies that the list of excluded real property estates is not an exclusive list;
- ▶ defines terms;
- ▶ addresses the Division of Real Estate making rules:
 - regarding required disclosures in the offer or sale of an undivided fractionalized long-term estate;
 - imposing requirements of management agreements; and
 - addressing master leases;
- ▶ addresses investigatory powers of the Division of Real Estate;
- ▶ addresses remedies and actions for violations; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-1-13, as last amended by Chapter 81, Laws of Utah 2003

61-2-2, as last amended by Chapter 264, Laws of Utah 2003

61-2-5.5, as last amended by Chapters 102 and 243, Laws of Utah 1996

61-2-21, as last amended by Chapter 173, Laws of Utah 1999

ENACTS:

61-2-11.5, Utah Code Annotated 1953

61-2-26, Utah Code Annotated 1953

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

Section 1. Section **61-1-13** is amended to read:

61-1-13. Definitions.

(1) As used in this chapter:

~~[(+)]~~ (a) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a person specified.

~~[(2)]~~ (b) (i) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

(ii) "Agent" does not include an individual who represents:

~~[(a)]~~ (A) an issuer, who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and who:

~~[(+)]~~ (I) effects transactions in securities exempted by Subsection 61-1-14(1)(a), (b), (c), (i), or (j);

~~[(+)]~~ (II) effects transactions exempted by Subsection 61-1-14(2);

~~[(+)]~~ (III) effects transactions in a covered security as described in Sections 18(b)(3) and

18(b)(4)(D) of the Securities Act of 1933; or

~~[(iv)]~~ (IV) effects transactions with existing employees, partners, officers, or directors of the issuer; or

~~[(b)]~~ (B) a broker-dealer in effecting transactions in this state limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.

(iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(iv) "Agent" does not include a person described in Subsection (3).

~~[(3)]~~ (c) (i) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for ~~[his]~~ the person's own account.

(ii) "Broker-dealer" does not include:

~~[(a)]~~ (A) an agent;

~~[(b)]~~ (B) an issuer;

~~[(c)]~~ (C) a bank, savings institution, or trust company;

~~[(d)]~~ (D) a person who has no place of business in this state if:

~~[(i)]~~ (I) the person effects transactions in this state exclusively with or through:

~~[(A)]~~ (Aa) the issuers of the securities involved in the transactions;

~~[(B)]~~ (Bb) other broker-dealers; or

~~[(E)]~~ (Cc) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

~~[(ii)]~~ (II) during any period of 12 consecutive months the person does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in Subsection ~~[(3)(d)(i)]~~ (1)(c)(ii)(D)(I), whether or not the offeror or any of the offerees is then present in this state;

~~[(e)]~~ (E) a general partner who organizes and effects transactions in securities of three or

fewer limited partnerships, of which the person is the general partner, in any period of 12 consecutive months;

~~[(f)]~~ (F) a person whose participation in transactions in securities is confined to those transactions made by or through a broker-dealer licensed in this state;

~~[(g)]~~ (G) a person who is a real estate broker licensed in this state and who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed or trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

~~[(h)]~~ (H) a person effecting transactions in commodity contracts or commodity options;

(I) a person described in Subsection (3); or

~~[(i)]~~ (J) other persons as the division, by rule or order, may designate, consistent with the public interest and protection of investors, as not within the intent of this Subsection ~~[(3)]~~ (1)(c).

~~[(4)]~~ (d) "Buy" or "purchase" means every contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

~~[(5)]~~ (e) "Commodity" means, except as otherwise specified by the division by rule:

~~[(a)]~~ (i) any agricultural, grain, or livestock product or byproduct, except real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property;

~~[(b)]~~ (ii) any metal or mineral, including a precious metal, except a numismatic coin whose fair market value is at least 15% greater than the value of the metal it contains;

~~[(c)]~~ (iii) any gem or gemstone, whether characterized as precious, semi-precious, or otherwise;

~~[(d)]~~ (iv) any fuel, whether liquid, gaseous, or otherwise;

~~[(e)]~~ (v) any foreign currency; and

~~[(f)]~~ (vi) all other goods, articles, products, or items of any kind, except any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner of the work.

~~[(6)]~~ ~~(f)~~ (i) "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise.

~~[(a)]~~ (ii) Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

~~[(b)]~~ ~~(i)~~ (iii) (A) A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

~~[(ii)]~~ (B) The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

~~[(7)]~~ ~~(a)~~ (g) (i) "Commodity option" means any account, agreement, or contract giving a party to the option the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

~~[(b)]~~ ~~(i)~~ (ii) "Commodity option" does not include an option traded on a national securities exchange registered with the United States Securities and Exchange Commission or on a board of trade designated as a contract market by the Commodity Futures Trading Commission.

~~[(8)]~~ (h) "Director" means the director of the Division of Securities charged with the administration and enforcement of this chapter.

~~[(9)]~~ (i) "Division" means the Division of Securities established by Section 61-1-18.

~~[(10)]~~ (j) "Executive director" means the executive director of the Department of Commerce.

~~[(11)]~~ (k) "Federal covered adviser" means a person who:

(i) is registered under Section 203 of the Investment Advisers Act of 1940; or

(ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of the Investment Advisers Act of 1940.

~~[(12)]~~ (l) "Federal covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated ~~[thereunder]~~ under Section 18(b) of the Securities Act of 1933.

~~[(13)]~~ (m) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

~~[(14)]~~ (n) "Guaranteed" means guaranteed as to payment of principal or interest as to debt securities, or dividends as to equity securities.

~~[(15)(a)]~~ (o)(i) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

~~[(b)]~~ (ii) "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the ~~[foregoing]~~ investment advisory services described in Subsection (1)(o)(i) to others for compensation and as part of a business or who hold themselves out as providing the ~~[foregoing]~~ investment advisory services described in Subsection (1)(o)(i) to others for compensation.

~~[(c)]~~ (iii) "Investment adviser" does not include:

~~[(i)]~~ (A) an investment adviser representative;

~~[(ii)]~~ (B) a bank, savings institution, or trust company;

~~[(iii)]~~ (C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

~~[(iv)]~~ (D) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special

compensation for them;

~~[(v)]~~ (E) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, of general, regular, and paid circulation, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

~~[(vi)]~~ (F) any person who is a federal covered adviser;

(G) a person described in Subsection (3); or

~~[(vii)]~~ (H) such other persons not within the intent of this Subsection ~~[(15)]~~ (1)(o) as the division may by rule or order designate.

~~[(16)]~~ (p) (i) "Investment adviser representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who:

~~[(a)(i)]~~ (A) (I) is employed by or associated with an investment adviser who is licensed or required to be licensed under this chapter; or

~~[(ii)]~~ (II) has a place of business located in this state and is employed by or associated with a federal covered adviser; and

~~[(b)]~~ (B) does any of the following:

~~[(i)]~~ (I) makes any recommendations or otherwise renders advice regarding securities;

~~[(ii)]~~ (II) manages accounts or portfolios of clients;

~~[(iii)]~~ (III) determines which recommendation or advice regarding securities should be given;

~~[(iv)]~~ (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

~~[(v)]~~ (V) supervises employees who perform any of the ~~[foregoing]~~ acts described in this Subsection (1)(p)(i)(B).

(ii) "Investment advisor representative" does not include a person described in Subsection (3).

~~[(17)(a)]~~ (q) (i) "Issuer" means any person who issues or proposes to issue any security

or has outstanding a security that it has issued.

~~[(b)]~~ (ii) With respect to a preorganization certificate or subscription, "issuer" means the promoter or the promoters of the person to be organized.

~~[(c) With respect to:]~~

~~[(i) interests in trusts, including but not limited to collateral trust certificates, voting trust certificates, and certificates of deposit for securities; or]~~

~~[(ii) shares in an investment company without a board of directors, "issuer"]~~

(iii) "Issuer" means the person or persons performing the acts and assuming duties of a depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued~~[-]~~ with respect to:

(A) interests in trusts, including collateral trust certificates, voting trust certificates, and certificates of deposit for securities; or

(B) shares in an investment company without a board of directors.

~~[(d)]~~ (iv) With respect to an equipment trust certificate, a conditional sales contract, or similar securities serving the same purpose, "issuer" means the person by whom the equipment or property is to be used.

~~[(e)]~~ (v) With respect to interests in partnerships, general or limited, "issuer" means the partnership itself and not the general partner or partners.

~~[(f)]~~ (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payment out of production under the titles or leases, "issuer" means the owner of the title or lease or right of production, whether whole or fractional, who creates fractional interests therein for the purpose of sale.

~~[(18)]~~ (r) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

~~[(19)]~~ (s) "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a joint venture, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

~~[(20)]~~ (t) "Precious metal" means the following, whether in coin, bullion, or other form:

~~[(a)]~~ (i) silver;

~~[(b)]~~ (ii) gold;

~~[(c)]~~ (iii) platinum;

~~[(d)]~~ (iv) palladium;

~~[(e)]~~ (v) copper; and

~~[(f)]~~ (vi) such other substances as the division may specify by rule.

~~[(21)]~~ (u) "Promoter" means any person who, acting alone or in concert with one or more persons, takes initiative in founding or organizing the business or enterprise of a person.

~~[(22)(a)]~~ (v) (i) "Sale" or "sell" includes every contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

~~[(b)]~~ (ii) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

~~[(c)]~~ (iii) The following are examples of the definitions in ~~[Subsections (22)(a) and (b)]~~ Subsection (1)(v)(i) or (ii):

~~[(i)]~~ (A) any security given or delivered with or as a bonus on account of any purchase of a security or any other thing, is part of the subject of the purchase, and has been offered and sold for value;

~~[(ii)]~~ (B) a purported gift of assessable stock is an offer or sale as is each assessment levied on the stock;

~~[(iii)]~~ (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire or subscribe to another security of the same or another issuer is an offer or sale of that security, and also an offer of the other security, whether the right to convert or acquire is exercisable immediately or in the future;

~~[(iv)]~~ (D) any conversion or exchange of one security for another shall constitute an offer or sale of the security received in a conversion or exchange, and the offer to buy or the purchase of the security converted or exchanged;

~~[(v)]~~ (E) securities distributed as a dividend wherein the person receiving the dividend surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or

sale;

~~[(vi)]~~ (F) a dividend of a security of another issuer is an offer or sale; or

~~[(vii)]~~ (G) the issuance of a security under a merger, consolidation, reorganization, recapitalization, reclassification, or acquisition of assets shall constitute the offer or sale of the security issued as well as the offer to buy or the purchase of any security surrendered in connection therewith, unless the sole purpose of the transaction is to change the issuer's domicile.

~~[(d)]~~ (iv) The terms defined in Subsections ~~[(22)(a) and (b)]~~ (1)(v)(i) and (ii) do not include:

~~[(i)]~~ (A) a good faith gift;

~~[(ii)]~~ (B) a transfer by death;

~~[(iii)]~~ (C) a transfer by termination of a trust or of a beneficial interest in a trust;

~~[(iv)]~~ (D) a security dividend not within Subsection ~~[(22)(c)(v) or (vi)]~~ (1)(v)(iii)(E) or (F);

~~[(v)]~~ (E) a securities split or reverse split; or

~~[(vi)]~~ (F) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

~~[(23)]~~ (w) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this chapter.

~~[(24)(a)]~~ (x) (i) "Security" means any:

~~[(i)]~~ (A) note;

~~[(ii)]~~ (B) stock;

~~[(iii)]~~ (C) treasury stock;

~~[(iv)]~~ (D) bond;

~~[(v)]~~ (E) debenture;

~~[(vi)]~~ (F) evidence of indebtedness;

~~[(vii)]~~ (G) certificate of interest or participation in any profit-sharing agreement;

~~[(viii)]~~ (H) collateral-trust certificate;

~~[(ix)]~~ (I) preorganization certificate or subscription;

~~[(x)]~~ (J) transferable share;

~~[(xi)]~~ (K) investment contract;

~~[(xii)]~~ (L) burial certificate or burial contract;

~~[(xiii)]~~ (M) voting-trust certificate;

~~[(xiv)]~~ (N) certificate of deposit for a security;

~~[(xv)]~~ (O) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

~~[(xvi)]~~ (P) commodity contract or commodity option;

~~[(xvii)]~~ (Q) interest in a limited liability company;

~~[(xviii)]~~ (R) viatical settlement interest; or

~~[(xix)]~~ (S) in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

~~[(b)]~~ (ii) "Security" does not include any:

~~[(i)]~~ (A) insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a lump sum or periodically for life or some other specified period; ~~[or]~~

~~[(ii)]~~ (B) interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, there are five or fewer members, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company~~[-Evidence];~~
or

(C) (I) a whole long-term estate in real property;

(II) an undivided fractionalized long-term estate in real property that consists of ten or fewer owners; or

(III) an undivided fractionalized long-term estate in real property that consists of more

than ten owners if, when the real property estate is subject to a management agreement:

(Aa) the management agreement permits a simple majority of owners of the real property estate to not renew or to terminate the management agreement at the earlier of the end of the management agreement's current term, or 180 days after the day on which the owners give notice of termination to the manager;

(Bb) the management agreement prohibits, directly or indirectly, the lending of the proceeds earned from the real property estate or the use or pledge of its assets to any person or entity affiliated with or under common control of the manager; and

(Cc) the management agreement complies with any other requirement imposed by rule by the Real Estate Commission under Section 61-2-26.

(iii) For purposes of Subsection (1)(x)(ii)(B), evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company.

~~[(25)]~~ (y) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(z) (i) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is a:

(A) tenancy in common; or

(B) any other legal form of undivided estate in real property including:

(I) a fee estate;

(II) a life estate; or

(III) other long-term estate.

(ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

~~[(26) (a)]~~ (aa) (i) "Viatical settlement interest" means the entire interest or any fractional interest in any of the following that is the subject of a viatical settlement:

~~[(i)]~~ (A) a life insurance policy; or

~~[(ii)]~~ (B) the death benefit under a life insurance policy.

~~(b)~~ (ii) "Viatical settlement interest" does not include the initial purchase from the viator by a provider of viatical settlements.

(bb) "Whole long-term estate" means a person or persons through joint tenancy owns real property through:

- (i) a fee estate;
- (ii) a life estate; or
- (iii) other long-term estate.

~~(27)~~ (cc) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal holidays listed in Section 63-13-2.

(2) A term not defined in ~~[Section 61-1-13]~~ this section shall have the meaning as established by division rule. The meaning of a term neither defined in this section nor by rule of the division shall be the meaning commonly accepted in the business community.

(3) (a) This Subsection (3) applies to:

- (i) the offer or sale of a real property estate exempted from the definition of security under Subsection (1)(x)(ii)(C); or
- (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a security.

(b) A person who, directly or indirectly receives compensation in connection with the offer or sale as provided in this Subsection (3) of a real property estate is not an agent, broker-dealer, investment adviser, or investor adviser representative under this chapter if that person is licensed under Chapter 2, Division of Real Estate, as:

- (i) a principal real estate broker;
- (ii) an associate real estate broker; or
- (iii) a real estate sales agent.

(4) The list of real property estates excluded from the definition of securities under Subsection (1)(x)(ii)(C) is not an exclusive list of real property estates or interests that are not a security.

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

61-2-2. Definitions.

As used in this chapter:

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

(2) "Branch office" means a principal broker's real estate brokerage office other than ~~[his]~~ the principal broker's main office.

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

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

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

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

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

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

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

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

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

(11) "Main office" means the address which a principal broker designates with the division as ~~[his]~~ the principal broker's primary brokerage office.

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

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

(ii) who advertises, offers, attempts, or otherwise holds himself out to be engaged in the

business described in Subsection (12)(a)(i);

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

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

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

(e) except for mortgage lenders, title insurance agents, and their employees, who assists or directs in the closing of any real estate transaction with the expectation of receiving valuable consideration.

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

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

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

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

(b) "Property management" does not include:

(i) hotel or motel management;

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

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

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

(15) "Real estate sales agent" and "sales agent" mean any person affiliated with a licensed principal real estate broker, either as an independent contractor or an employee as provided in Section 61-2-25, to perform for valuable consideration any act set out in Subsection (12).

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

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

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

(18) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.

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

(20) (a) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is a:

(i) tenancy in common; or

(ii) any other legal form of undivided estate in real property including:

(A) a fee estate;

(B) a life estate; or

(C) other long-term estate.

(b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

Section 3. Section **61-2-5.5** is amended to read:

61-2-5.5. Real Estate Commission created -- Functions -- Appointment -- Qualification and terms of members -- Expenses -- Meetings.

(1) There is created within the division a Real Estate Commission. The commission shall:

(a) make rules for the administration of this chapter which are not inconsistent with this chapter, including:

(i) licensing of principal brokers, associate brokers, sales agents, real estate companies, and branch offices;

(ii) prelicensing and postlicensing education curricula, examination procedures, and the certification and conduct of real estate schools, course providers, and instructors;

(iii) proper handling of funds received by real estate licensees, and brokerage office procedures and recordkeeping requirements;

(iv) property management; [~~and~~]

(v) standards of conduct for real estate licensees; and

(vi) rules made under Section 61-2-26 regarding an undivided fractionalized long-term estate:

(b) establish, with the concurrence of the division, all fees as provided in this chapter and Title 61, Chapter 2a, Real Estate Recovery Fund Act;

(c) conduct all administrative hearings not delegated by it to an administrative law judge relating to the licensing of any applicant, conduct of any licensee, or the certification or conduct of any real estate school, course provider, or instructor regulated under this chapter;

(d) with the concurrence of the director, impose sanctions against licensees and certificate holders as provided in Section 61-2-11;

(e) advise the director on the administration and enforcement of any matters affecting the division and the real estate sales and property management industries;

(f) advise the director on matters affecting the division budget;

(g) advise and assist the director in conducting real estate seminars; and

(h) perform other duties as provided by this chapter and Title 61, Chapter 2a, Real Estate Recovery Fund Act.

(2) (a) The commission shall be comprised of five members appointed by the governor

and approved by the Senate.

(b) Four of the commission members shall have at least five years' experience in the real estate business and shall hold an active principal broker, associate broker, or sales agent license.

(c) One commission member shall be a member of the general public.

(d) No more than one commission member may be appointed from any given county in the state.

(3) (a) Except as required by Subsection (3)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) A commission member may not serve more than one consecutive term.

(d) Members of the commission shall annually select one member to serve as chair.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(6) The commission shall meet at least monthly. The director may call additional meetings at his discretion or upon the request of the chair or upon the written request of three or more commission members. Three members constitute a quorum for the transaction of business.

Section 4. Section **61-2-11.5** is enacted to read:

61-2-11.5. Investigations related to an undivided fractionalized long-term estate.

In addition to any action authorized by Section 61-2-11, in relationship to the offer or sale of an undivided fractionalized long-term estate:

(1) the division may make any public or private investigation within or outside of this state as the division considers necessary to determine whether any person has violated, is violating, or is about to violate this chapter or any rule or order under this chapter;

(2) to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter, the division may require or permit any person to file a statement in writing, under oath or otherwise as to all facts and circumstances concerning the matter to be investigated; and

(3) for the purpose of the investigation described in Subsection (1), the division or any employee designated by the division may:

(a) administer oaths and affirmation; or

(b) take any action permitted by Section 61-2-11 including:

(i) subpoena witnesses and compel their attendance;

(ii) take evidence; and

(iii) require the production of any books, papers, correspondence, memoranda, agreement, or other documents or records relevant or material to the investigation.

Section 5. 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, or is about to engage 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]~~ the director 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]~~ any 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 director agree that the acts of the person violate this chapter, the director:

(i) shall issue an order making the ~~[cease and desist]~~ order issued under Subsection (1)

permanent[-]; and

(ii) may impose a fine.

(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 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.

(d) Upon a proper showing in an action brought under this section related to an undivided fractionalized long-term estate, the court may:

(i) issue a permanent or temporary, prohibitory or mandatory injunction;

(ii) issue a restraining order or writ of mandamus;

(iii) enter a declaratory judgment;

(iv) appoint a receiver or conservator for the defendant or the defendant's assets;

(v) order disgorgement;

(vi) order rescission;

(vii) impose a fine of not more than \$500 for each violation of this chapter; and

(viii) enter any other relief the court considers just.

(e) The court may not require the division to post a bond in an action brought under this Subsection (2).

(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.

Section 6. Section **61-2-26** is enacted to read:

61-2-26. Rulemaking required for offer or sale of an undivided fractionalized long-term estate -- Disclosures -- Management agreement.

(1) (a) A licensee or certificate holder under this chapter who sells or offers to sell an undivided fractionalized long-term estate shall comply with the disclosure requirements imposed by rules made by the commission under this section.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules as to the timing, form, and substance of disclosures required to be made by a licensee or certificate holder under this section.

(2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules imposing requirements for a management agreement related to an undivided fractionalized long-term estate that makes the offer or sale of the undivided fractionalized long-term estate treated as a real estate transaction and not treated as an offer or sale of a security under Chapter 1, Utah Uniform Securities Act.

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules establishing:

(a) the disclosures required in the sale or offer of an undivided fractionalized long-term estate that is subject to a master lease;

(b) requirements for the management of a master lease on an undivided fractionalized long-term estate; and

(c) the requirements on the structure of a master lease on an undivided fractionalized long-term estate.