

REAL ESTATE AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gordon E. Snow

Senate Sponsor: L. Alma Mansell

LONG TITLE

General Description:

This bill modifies provisions related to the Division of Real Estate's regulation of real estate issues.

Highlighted Provisions:

This bill:

- ▶ modifies exemptions for persons or transactions;
- ▶ permits a member of the Real Estate Commission to serve two consecutive terms;
- ▶ modifies limit on the amount of a civil penalty;
- ▶ modifies grounds for disciplinary action; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2-3, as last amended by Chapter 102, Laws of Utah 1996

61-2-5.5, as last amended by Chapters 199 and 257, Laws of Utah 2005

61-2-11, as last amended by Chapter 199, Laws of Utah 2005

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

Section 1. Section **61-2-3** is amended to read:

30 **61-2-3. Exempt persons and transactions.**

31 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
32 required for:

33 (i) any person who as owner or lessor performs the acts described in Subsection 61-2-2
34 (12) with reference to property owned or leased by that person;

35 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
36 to nonresidential real estate owned or leased by the employer, performs the acts enumerated in
37 Subsections 61-2-2(12)(a) and (b);

38 (iii) a regular salaried employee of the owner of real estate who performs property
39 management services with reference to real estate owned by the employer, except that the
40 employee may only manage property for one employer;

41 (iv) a person who performs property management services for the apartments at which
42 that person resides in exchange for free or reduced rent on that person's apartment;

43 (v) a regular salaried employee of a condominium homeowners' association who
44 manages real property subject to the declaration of condominium that established the
45 homeowners' association, except that the employee may only manage property for one
46 condominium homeowners' association; and

47 (vi) a regular salaried employee of a licensed property management company who
48 performs support services, as prescribed by rule, for the property management company.

49 (b) Subsection (1)(a) does not exempt from licensing:

50 (i) employees engaged in the sale of properties regulated under:

51 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

52 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

53 (ii) employees engaged in the sale of cooperative interests regulated under Title 57,
54 Chapter 23, Real Estate Cooperative Marketing Act; or

55 (iii) any person whose interest as an owner or lessor was obtained by [him] that person
56 or transferred to [him] that person for the purpose of evading the application of this chapter,
57 and not for any other legitimate business reason.

- 58 (2) A license under this chapter is not required for:
- 59 (a) isolated transactions by persons holding a duly executed power of attorney from the
- 60 owner;
- 61 (b) services rendered by an attorney at law in performing ~~[his]~~ the attorney at law's
- 62 duties as an attorney at law;
- 63 (c) a receiver, trustee in bankruptcy, administrator, executor, or any person acting
- 64 under order of any court;
- 65 (d) a trustee or its employees under a deed of trust or a will; or
- 66 (e) any public utility, its officers, or regular salaried employees, unless performance of
- 67 any of the acts set out in Subsection 61-2-2 (12) is in connection with the sale, purchase, lease,
- 68 or other disposition of real estate or investment in real estate unrelated to the principal business
- 69 activity of that public utility.

70 (3) ~~[(a) Except as provided in Subsection (3)(b), a]~~ A license under this chapter is not
71 required for any person registered to act as a broker-dealer, agent, or investment advisor under
72 the Utah and federal securities laws in the sale or the offer for sale of real estate if:

73 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
74 Securities Act of 1933 and the Securities Exchange Act of 1934; and

75 (ii) the security is registered for sale;

76 (A) pursuant to the Securities Act of 1933; or

77 (B) by Title 61, Chapter 1, Utah Uniform Securities Act[-]; or

78 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
79 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
80 D, Rule 506, 17 C.F.R. Sec. 230.506; and

81 (ii) the selling agent and the purchaser are not residents of this state.

82 ~~[(b) The exemption in Subsection (3)(a) does not apply to exempt or resale~~
83 ~~transactions.]~~

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

85 **61-2-5.5. Real Estate Commission created -- Functions -- Appointment --**

86 **Qualification and terms of members -- Expenses -- Meetings.**

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

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

91 (i) licensing of:

92 (A) principal brokers;

93 (B) associate brokers;

94 (C) sales agents;

95 (D) real estate companies; and

96 (E) branch offices;

97 (ii) prelicensing and postlicensing education curricula;

98 (iii) examination procedures;

99 (iv) the certification and conduct of:

100 (A) real estate schools;

101 (B) course providers; and

102 (C) instructors;

103 (v) proper handling of funds received by real estate licensees;

104 (vi) brokerage office procedures and recordkeeping requirements;

105 (vii) property management;

106 (viii) standards of conduct for real estate licensees; and

107 (ix) rules made under Section 61-2-26 regarding an undivided fractionalized long-term
108 estate;

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

111 (c) conduct all administrative hearings not delegated by the commission to an
112 administrative law judge or the division relating to the:

113 (i) licensing of any applicant;

114 (ii) conduct of any licensee; or
115 (iii) the certification or conduct of any real estate school, course provider, or instructor
116 regulated under this chapter;

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

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

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

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

123 (h) perform other duties as provided by:

124 (i) this chapter; and

125 (ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.

126 (2) (a) The commission shall be comprised of five members appointed by the governor
127 and approved by the Senate.

128 (b) Four of the commission members shall:

129 (i) have at least five years' experience in the real estate business; and

130 (ii) hold an active principal broker, associate broker, or sales agent license.

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

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

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

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

141 (c) Upon the expiration of the term of a member of the commission, the member of the

142 commission shall continue to hold office until a successor is appointed and qualified.

143 (d) A commission member may not serve more than [~~one~~] two consecutive [~~term~~]
144 terms.

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

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

148 (5) (a) A member shall receive no compensation or benefits for the member's services,
149 but may receive per diem and expenses incurred in the performance of the member's official
150 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
151 63A-3-107.

152 (b) A member may decline to receive per diem and expenses for the member's service.

153 (6) (a) The commission shall meet at least monthly.

154 (b) The director may call additional meetings:

155 (i) at the director's discretion;

156 (ii) upon the request of the chair; or

157 (iii) upon the written request of three or more commission members.

158 (7) Three members of the commission constitute a quorum for the transaction of
159 business.

160 Section 3. Section **61-2-11** is amended to read:

161 **61-2-11. Investigations -- Subpoena power of division -- Grounds for disciplinary**
162 **action.**

163 The division may investigate or cause to be investigated the actions of any principal
164 broker, associate broker, sales agent, real estate school, course provider, or school instructor
165 licensed or certified by this state, or of any applicant for licensure or certification, or of any
166 person who acts in any of those capacities within this state. The division is empowered to
167 subpoena witnesses, take evidence, and require by subpoena duces tecum the production of
168 books, papers, contracts, records, other documents, or information considered relevant to the
169 investigation. The division may serve subpoenas by certified mail. Each failure to respond to a

170 subpoena is considered as a separate violation of this chapter. The commission, with the
171 concurrence of the director, may impose a civil penalty in an amount not to exceed [~~\$500~~]
172 \$2,500 per violation, impose educational requirements, and suspend, revoke, place on
173 probation, or deny renewal, reinstatement, or reissuance of any license or any certification if at
174 any time the licensee or certificate holder, whether acting as an agent or on his own account,
175 is found guilty of:

- 176 (1) making any substantial misrepresentation;
- 177 (2) making any false promises of a character likely to influence, persuade, or induce;
- 178 (3) pursuing a continued and flagrant course of misrepresentation, or of making false
179 promises through agents, sales agents, advertising, or otherwise;
- 180 (4) acting for more than one party in a transaction without the informed consent of all
181 parties;
- 182 (5) (a) acting as an associate broker or sales agent while not licensed with a licensed
183 principal broker;
- 184 (b) representing or attempting to represent a broker other than the principal broker with
185 whom the person is affiliated; or
- 186 (c) representing as sales agent or having a contractual relationship similar to that of
187 sales agent with other than a licensed principal broker;
- 188 (6) (a) failing, within a reasonable time, to account for or to remit any monies coming
189 into the person's possession that belong to others;
- 190 (b) commingling the funds described in Subsection (6)(a) with the person's own; or
- 191 (c) diverting the funds described in Subsection (6)(a) from the purpose for which they
192 were received;
- 193 (7) paying or offering to pay valuable consideration, as defined by the commission, to
194 any person not licensed under this chapter, except that[~~:(a)~~] valuable consideration may be
195 shared;
- 196 (a) with a licensed principal broker of another jurisdiction; or
- 197 (b) as provided under [~~the~~];

- 198 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
199 (ii) Title 16, Chapter 11, Professional Corporation Act; or [the]
200 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act; [and]
201 ~~[(b) the valuable consideration to be paid to a licensee for the performance of any of~~
202 ~~the acts specified in this chapter may be paid by the licensee's principal broker to the licensee's~~
203 ~~Sub-Chapter S corporation;]~~
204 (8) being unworthy or incompetent to act as a principal broker, associate broker, or
205 sales agent in such manner as to safeguard the interests of the public;
206 (9) failing to voluntarily furnish copies of all documents to all parties executing the
207 documents;
208 (10) failing to keep and make available for inspection by the division a record of each
209 transaction, including:
210 (a) the names of buyers and sellers or lessees and lessors;
211 (b) the identification of the property;
212 (c) the sale or rental price;
213 (d) any monies received in trust;
214 (e) any agreements or instructions from buyers and sellers or lessees and lessors; and
215 (f) any other information required by rule;
216 (11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether
217 the purchase, sale, or rental is made for himself or for an undisclosed principal;
218 (12) regardless of whether the crime was related to real estate, being convicted of a
219 criminal offense involving moral turpitude within five years of the most recent application,
220 including a conviction based upon a plea of nolo contendere, or a plea held in abeyance to a
221 criminal offense involving moral turpitude;
222 (13) advertising the availability of real estate or the services of a licensee in a false,
223 misleading, or deceptive manner;
224 (14) in the case of a principal broker or a licensee who is a branch manager, failing to
225 exercise reasonable supervision over the activities of the principal broker's or branch manager's

226 licensees and any unlicensed staff;
227 (15) violating or disregarding this chapter, an order of the commission, or the rules
228 adopted by the commission and the division;
229 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
230 estate transaction;
231 (17) any other conduct which constitutes dishonest dealing;
232 (18) unprofessional conduct as defined by statute or rule; or
233 (19) suspension, revocation, surrender, or cancellation of a real estate license issued by
234 another jurisdiction, or of another professional license issued by this or another jurisdiction,
235 based on misconduct in a professional capacity that relates to character, honesty, integrity, or
236 truthfulness.