

1 **REAL ESTATE AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gordon E. Snow**

5 Senate Sponsor: L. Alma Mansell

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7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ permits a member of the Real Estate Commission to serve two consecutive terms;
- 14 ▶ modifies grounds for disciplinary action; and
- 15 ▶ makes technical changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **61-2-5.5**, as last amended by Chapters 199 and 257, Laws of Utah 2005

23 **61-2-11**, as last amended by Chapter 199, Laws of Utah 2005

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

26 Section 1. Section **61-2-5.5** is amended to read:

27 **61-2-5.5. Real Estate Commission created -- Functions -- Appointment --**



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

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

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

33 (i) licensing of:

34 (A) principal brokers;

35 (B) associate brokers;

36 (C) sales agents;

37 (D) real estate companies; and

38 (E) branch offices;

39 (ii) prelicensing and postlicensing education curricula;

40 (iii) examination procedures;

41 (iv) the certification and conduct of:

42 (A) real estate schools;

43 (B) course providers; and

44 (C) instructors;

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

46 (vi) brokerage office procedures and recordkeeping requirements;

47 (vii) property management;

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

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

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

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

55 (i) licensing of any applicant;

56 (ii) conduct of any licensee; or

57 (iii) the certification or conduct of any real estate school, course provider, or instructor  
58 regulated under this chapter;

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

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

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

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

65 (h) perform other duties as provided by:

66 (i) this chapter; and

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

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

70 (b) Four of the commission members shall:

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

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

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

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

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

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

83 (c) Upon the expiration of the term of a member of the commission, the member of the  
84 commission shall continue to hold office until a successor is appointed and qualified.

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

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

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

90 (5) (a) A member shall receive no compensation or benefits for the member's services,  
91 but may receive per diem and expenses incurred in the performance of the member's official  
92 duties at the rates established by the Division of Finance under Sections 63A-3-106 and  
93 63A-3-107.

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

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

96 (b) The director may call additional meetings:

97 (i) at the director's discretion;

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

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

100 (7) Three members of the commission constitute a quorum for the transaction of  
101 business.

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

103 **61-2-11. Investigations -- Subpoena power of division -- Grounds for disciplinary**  
104 **action.**

105 The division may investigate or cause to be investigated the actions of any principal  
106 broker, associate broker, sales agent, real estate school, course provider, or school instructor  
107 licensed or certified by this state, or of any applicant for licensure or certification, or of any  
108 person who acts in any of those capacities within this state. The division is empowered to  
109 subpoena witnesses, take evidence, and require by subpoena duces tecum the production of  
110 books, papers, contracts, records, other documents, or information considered relevant to the  
111 investigation. The division may serve subpoenas by certified mail. Each failure to respond to a  
112 subpoena is considered as a separate violation of this chapter. The commission, with the  
113 concurrence of the director, may impose a civil penalty in an amount not to exceed \$500 per  
114 violation, impose educational requirements, and suspend, revoke, place on probation, or deny  
115 renewal, reinstatement, or reissuance of any license or any certification if at any time the  
116 licensee or certificate holder, whether acting as an agent or on his own account, is found guilty  
117 of:

118 (1) making any substantial misrepresentation;

119 (2) making any false promises of a character likely to influence, persuade, or induce;

120 (3) pursuing a continued and flagrant course of misrepresentation, or of making false

- 121 promises through agents, sales agents, advertising, or otherwise;
- 122 (4) acting for more than one party in a transaction without the informed consent of all  
123 parties;
- 124 (5) (a) acting as an associate broker or sales agent while not licensed with a licensed  
125 principal broker;
- 126 (b) representing or attempting to represent a broker other than the principal broker with  
127 whom the person is affiliated; or
- 128 (c) representing as sales agent or having a contractual relationship similar to that of  
129 sales agent with other than a licensed principal broker;
- 130 (6) (a) failing, within a reasonable time, to account for or to remit any monies coming  
131 into the person's possession that belong to others;
- 132 (b) commingling the funds described in Subsection (6)(a) with the person's own; or
- 133 (c) diverting the funds described in Subsection (6)(a) from the purpose for which they  
134 were received;
- 135 (7) paying or offering to pay valuable consideration, as defined by the commission, to  
136 any person not licensed under this chapter, except that~~[-(a)]~~ valuable consideration may be  
137 shared;
- 138 (a) with a licensed principal broker of another jurisdiction; or
- 139 (b) as provided under ~~[the]~~;
- 140 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- 141 (ii) Title 16, Chapter 11, Professional Corporation Act; or ~~[the]~~
- 142 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act; ~~[and]~~
- 143 ~~[(b) the valuable consideration to be paid to a licensee for the performance of any of~~  
144 ~~the acts specified in this chapter may be paid by the licensee's principal broker to the licensee's~~  
145 ~~Sub-Chapter S corporation;]~~
- 146 (8) being unworthy or incompetent to act as a principal broker, associate broker, or  
147 sales agent in such manner as to safeguard the interests of the public;
- 148 (9) failing to voluntarily furnish copies of all documents to all parties executing the  
149 documents;
- 150 (10) failing to keep and make available for inspection by the division a record of each  
151 transaction, including:

- 152 (a) the names of buyers and sellers or lessees and lessors;
- 153 (b) the identification of the property;
- 154 (c) the sale or rental price;
- 155 (d) any monies received in trust;
- 156 (e) any agreements or instructions from buyers and sellers or lessees and lessors; and
- 157 (f) any other information required by rule;
- 158 (11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether
- 159 the purchase, sale, or rental is made for himself or for an undisclosed principal;
- 160 (12) regardless of whether the crime was related to real estate, being convicted of a
- 161 criminal offense involving moral turpitude within five years of the most recent application,
- 162 including a conviction based upon a plea of nolo contendere, or a plea held in abeyance to a
- 163 criminal offense involving moral turpitude;
- 164 (13) advertising the availability of real estate or the services of a licensee in a false,
- 165 misleading, or deceptive manner;
- 166 (14) in the case of a principal broker or a licensee who is a branch manager, failing to
- 167 exercise reasonable supervision over the activities of the principal broker's or branch manager's
- 168 licensees and any unlicensed staff;
- 169 (15) violating or disregarding this chapter, an order of the commission, or the rules
- 170 adopted by the commission and the division;
- 171 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 172 estate transaction;
- 173 (17) any other conduct which constitutes dishonest dealing;
- 174 (18) unprofessional conduct as defined by statute or rule; or
- 175 (19) suspension, revocation, surrender, or cancellation of a real estate license issued by
- 176 another jurisdiction, or of another professional license issued by this or another jurisdiction,
- 177 based on misconduct in a professional capacity that relates to character, honesty, integrity, or
- 178 truthfulness.

**Legislative Review Note**

as of 1-23-06 4:21 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**