

**Representative Gage Froerer** proposes the following substitute bill:

**EXEMPTION FROM LICENSURE BY**

**DIVISION OF REAL ESTATE**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mark W. Walker**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to state and local governments and licensure by the Division of Real Estate.

**Highlighted Provisions:**

This bill:

- ▶ exempts from licensure certain regular salaried employees of a county when acting on behalf of the county;
  - ▶ exempts from licensure certain agents of the Department of Transportation;
  - ▶ expands the activities government employees may engage in without being licensed;
- and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**1st Sub. H.B. 223**



26 **10-3-1110**, as enacted by Laws of Utah 2007, Chapter 325  
27 **61-2-3**, as last amended by Laws of Utah 2007, Chapter 325  
28 **72-5-116**, as enacted by Laws of Utah 2007, Chapter 325

29 ENACTS:

30 **17-50-106**, Utah Code Annotated 1953



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

32 Section 1. Section **10-3-1110** is amended to read:

33 **10-3-1110. Exemption from state licensure by Division of Real Estate.**

34 In accordance with Section 61-2-3, an employee of a municipality is exempt from  
35 licensure under Title 61, Chapter 2, Division of Real Estate:

- 36 (1) when engaging in an act on behalf of the municipality in accordance with:
- 37 (a) this title [~~and~~]; or
- 38 (b) Title 11, Cities, Counties, and Local Taxing Units; and
- 39 (2) if the act described in Subsection (1) is related to one or more of the following [~~is~~  
40 exempt from licensure under Title 61, Chapter 2, Division of Real Estate]:

- 41 [~~(1)~~] (a) acquiring real property, including by eminent domain;
- 42 [~~(2)~~] (b) disposing of real property; [~~or~~]
- 43 [~~(3)~~] (c) providing services that constitute property management, as defined in Section  
44 61-2-2[~~1~~]; or
- 45 (d) leasing real property.

46 Section 2. Section **17-50-106** is enacted to read:

47 **17-50-106. Exemption from state licensure by Division of Real Estate.**

48 In accordance with Section 61-2-3, an employee of a county is exempt from licensure  
49 under Title 61, Chapter 2, Division of Real Estate:

- 50 (1) when engaging in an act on behalf of the county in accordance with:
- 51 (a) this title; or
- 52 (b) Title 11, Cities, Counties, and Local Taxing Units; and
- 53 (2) if the act described in Subsection (1) is related to one or more of the following:
- 54 (a) acquiring real property, including by eminent domain;
- 55 (b) disposing of real property;

57 (c) providing services that constitute property management, as defined in Section  
58 61-2-2; or

59 (d) leasing real property.

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

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

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

64 (i) ~~any~~ a person who as owner or lessor performs the acts described in Subsection  
65 61-2-2 (12) with reference to property owned or leased by that person;

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

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

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

74 (v) a regular salaried employee of a condominium homeowners' association who  
75 manages real property subject to the declaration of condominium that established the  
76 homeowners' association, except that the employee may only manage property for one  
77 condominium homeowners' association; and

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

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

81 (i) an employee engaged in the sale of properties regulated under:

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

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

84 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,  
85 Chapter 23, Real Estate Cooperative Marketing Act; or

86 (iii) ~~any~~ a person whose interest as an owner or lessor is obtained by that person or  
87 transferred to that person for the purpose of evading the application of this chapter, and not for

88 any other legitimate business reason.

89 (2) A license under this chapter is not required for:

90 (a) an isolated transaction by a person holding a duly executed power of attorney from  
91 the owner;

92 (b) services rendered by an attorney in performing the attorney's duties as an attorney;

93 (c) a receiver, trustee in bankruptcy, administrator, executor, or [~~any~~] a person acting  
94 under order of any court;

95 (d) a trustee or employee of a trustee under a deed of trust or a will;

96 (e) [~~any~~] a public utility, officer of a public utility, or regular salaried employee of a  
97 public utility, unless performance of any of the acts set out in Subsection 61-2-2(12) is in  
98 connection with the sale, purchase, lease, or other disposition of real estate or investment in  
99 real estate unrelated to the principal business activity of that public utility;

100 (f) a regular salaried employee or authorized agent working under the oversight of the  
101 Department of Transportation when performing an act on behalf of the Department of  
102 Transportation in connection with one or more of the following:

103 (i) the acquisition of real property pursuant to Section 72-5-103;

104 (ii) the disposal of real property pursuant to Section 72-5-111; [~~or~~]

105 (iii) services that constitute property management; or

106 (iv) the leasing of real property;

107 (g) a regular salaried employee of a county, city, or town when performing an act on  
108 behalf of the county, city, or town:

109 (i) in accordance with:

110 (A) if a regular salaried employee of a city or town:

111 (I) Title 10, Utah Municipal Code; [~~and~~] or

112 (II) Title 11, Cities, Counties, and Local Taxing Units; and

113 (B) if a regular salaried employee of a county:

114 (I) Title 11, Cities, Counties, and Local Taxing Units; and

115 (II) Title 17, Counties; and

116 (ii) in connection with one or more of the following:

117 (A) the acquisition of real property, including by eminent domain;

118 (B) the disposal of real property; [~~or~~]

119 (C) services that constitute property management[-]; or

120 (D) the leasing of real property.

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

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

126 (ii) the security is registered for sale:

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

128 (B) by Title 61, Chapter 1, Utah Uniform Securities Act; or

129 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.  
130 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation  
131 D, Rule 506, 17 C.F.R. Sec. 230.506; and

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

133 Section 4. Section **72-5-116** is amended to read:

134 **72-5-116. Exemption from state licensure.**

135 In accordance with Section 61-2-3, an employee or authorized agent working under the  
136 oversight of the department when engaging in an act on behalf of the department related to one  
137 or more of the following is exempt from licensure under Title 61, Chapter 2, Division of Real  
138 Estate:

139 (1) acquiring real property pursuant to Section 72-5-103;

140 (2) disposing of real property pursuant to Section 72-5-111; [~~or~~]

141 (3) providing services that constitute property management, as defined in Section  
142 61-2-2[-]; or

143 (4) leasing of real property.

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**Fiscal Note****H.B. 223 1st Sub. (Buff) - Exemption from Licensure by Division of Real Estate**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. There could be some cost savings for local governments.

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