

H.B. 346

DIVISION OF REAL ESTATE RELATED AMENDMENTS

Representative **Gage Froerer** proposes the following amendments:

1. *Page 1, Lines 13 through 14:*

- 13 ▶ addresses fines that may be imposed;
 ▶ **addresses rulemaking by the Real Estate Commission;**
14 ▶ addresses disciplinary actions that may be imposed under provisions related to real

2. *Page 2, Lines 36 through 39:*

- 36 AMENDS:
 61-2-5.5, as last amended by Laws of Utah 2007, Chapter 325
37 61-2-13, as last amended by Laws of Utah 1991, Chapter 165
 61-2-20, as last amended by Laws of Utah 2007, Chapter 325
38 61-2-21, as last amended by Laws of Utah 2007, Chapter 325
39 61-2b-2, as last amended by Laws of Utah 2005, Chapter 199

3. *Page 3, Line 62:*

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

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

61-2-5.5. Real Estate Commission.

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

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

including:

(i) licensing of:

(A) principal brokers;

(B) associate brokers;

(C) sales agents;

(D) real estate companies; and

(E) branch offices;

(ii) prelicensing and postlicensing education curricula;

(iii) examination procedures;

(iv) the certification and conduct of:

(A) real estate schools;

(B) course providers; and

(C) instructors;

- (v) proper handling of funds received by real estate licensees;
- (vi) brokerage office procedures and recordkeeping requirements;
- (vii) property management;
- (viii) standards of conduct for real estate licensees; ~~{and}~~
- (ix) rules made under Section 61-2-26 regarding an undivided fractionalized long-term estate; and
(x) if the commission determines necessary, rules as provided in Subsection 61-2-20(3) regarding

legal forms;

- (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 the commission to an administrative law judge or the division relating to the:
 - (i) licensing of any applicant;
 - (ii) conduct of any licensee;
 - (iii) the certification or conduct of any real estate school, course provider, or instructor regulated under this chapter; or
 - (iv) violation of this chapter by any person;
 - (d) with the concurrence of the director, impose sanctions as provided in Section 61-2-12;
 - (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:
 - (i) this chapter; and
 - (ii) 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:
 - (i) have at least five years' experience in the real estate business; and
 - (ii) 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 described in Subsection (2)(b) shall at the time of appointment reside in any given county in the state.
 - (e) At least one commission member described in Subsection (2)(b) shall at the time of an appointment reside in a county that is not a county of the first or second class.
- (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) Upon the expiration of the term of a member of the commission, the member of the commission shall continue to hold office until a successor is appointed and qualified.
- (d) A commission member may not serve more than two consecutive terms.
- (e) 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) A member may not receive compensation or benefits for the member's 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) A member may decline to receive per diem and expenses for the member's service.
 - (6) (a) The commission shall meet at least monthly.
 - (b) The director may call additional meetings:
 - (i) at the director's discretion;
 - (ii) upon the request of the chair; or
 - (iii) upon the written request of three or more commission members.
 - (7) Three members of the commission constitute a quorum for the transaction of business.

4. Page 3, Line 85:

85 ~~[him]~~ the principal broker of the revocation or suspension of ~~[his]~~ the principal broker license.

Section 3. Section 61-2-20 is amended to read:

61-2-20. Rights and privileges of real estate licensees to fill out forms or documents.

~~{A}~~ **(1) Except as provided in Subsections (2) and (3), a** real estate licensee may fill out only those legal forms approved by the commission and the attorney general, and those forms provided by statute ~~{, with the following exceptions:}~~ .

~~{(1)}~~ **(2)** (a) **(i)** A principal broker may fill out any documents associated with the closing of a real estate transaction.

~~{(b)}~~ **(ii)** A branch broker or associate broker may fill out any documents associated with the closing of a real estate transaction if designated to fill out the documents by the principal broker with whom the branch broker or associate broker is affiliated.

~~{(2)}~~ **(b)** A real estate licensee may fill out real estate forms prepared by legal counsel of the buyer, seller, lessor, or lessee.

~~{(3)}~~ **(c)** If the commission and the attorney general have not approved a specific form for the transaction, a principal broker, associate broker, or sales agent may fill out real estate forms prepared by any legal counsel, including legal counsel retained by the brokerage to develop these forms.

(3) The commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide a process for the use of a legal form under this section if the rule:

(a) provides for the involvement of the commission and attorney general in the creation of a legal form; and

(b) protects the interest of the general public.

Renumber remaining sections accordingly.