

1 **REAL ESTATE TRANSACTION AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brian M. Greene**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to the sale or offer of an undivided fractionalized
10 long-term estate.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ provides that a real estate licensee or certificate holder shall make certain
15 disclosures to each prospective purchaser when the licensee or certificate holder
16 sells or offers to sell an undivided fractionalized long-term estate;
- 17 ▶ addresses the Real Estate Commission's rulemaking authority relating to the sale or
18 offer of an undivided fractionalized long-term estate by a real estate licensee; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **61-2f-102**, as last amended by Laws of Utah 2012, Chapter 166

27 **61-2f-202**, as last amended by Laws of Utah 2013, Chapter 292



28 REPEALS AND REENACTS:

29 **61-2f-307**, as renumbered and amended by Laws of Utah 2010, Chapter 379

30

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

32 Section 1. Section **61-2f-102** is amended to read:

33 **61-2f-102. Definitions.**

34 As used in this chapter:

35 (1) "Associate broker" means an individual who is:

36 (a) employed or engaged as an independent contractor by or on behalf of a principal
37 broker to perform an act set out in Subsection [~~(18)~~] (21) for valuable consideration; and

38 (b) licensed under this chapter as an associate broker.

39 (2) "Branch office" means a principal broker's real estate brokerage office that is not
40 the principal broker's main office.

41 (3) "Business day" means a day other than:

42 (a) a Saturday;

43 (b) a Sunday; or

44 (c) a federal or state holiday.

45 (4) "Business opportunity" means the sale, lease, or exchange of any business that
46 includes an interest in real estate.

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

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

50 [~~(8)~~] (7) "Condominium homeowners' association" means the condominium unit
51 owners acting as a group in accordance with declarations and bylaws.

52 [~~(9)~~] (8) (a) "Condominium hotel" means one or more condominium units that are
53 operated as a hotel.

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

56 [~~(7)~~] (9) "Condominium unit" is as defined in Section **57-8-3**.

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

58 (11) "Division" means the Division of Real Estate.

- 59 (12) "Entity" means:
- 60 (a) a corporation;
- 61 (b) a partnership;
- 62 (c) a limited liability company;
- 63 (d) a company;
- 64 (e) an association;
- 65 (f) a joint venture;
- 66 (g) a business trust;
- 67 (h) a trust; or
- 68 (i) any organization similar to an entity described in Subsections (12)(a) through (h).
- 69 (13) "Executive director" means the director of the Department of Commerce.
- 70 (14) "Foreclosure rescue" means, for compensation or with the expectation of receiving
- 71 valuable consideration, to:
 - 72 (a) engage, or offer to engage, in an act that:
 - 73 (i) the person represents will assist a borrower in preventing a foreclosure; and
 - 74 (ii) relates to a transaction involving the transfer of title to residential real property; or
 - 75 (b) as an employee or agent of another person:
 - 76 (i) solicit, or offer that the other person will engage in an act described in Subsection
 - 77 (14)(a); or
 - 78 (ii) negotiate terms in relationship to an act described in Subsection (14)(a).
- 79 (15) "Loan modification assistance" means, for compensation or with the expectation
- 80 of receiving valuable consideration, to:
 - 81 (a) act, or offer to act, on behalf of a person to:
 - 82 (i) obtain a loan term of a residential mortgage loan that is different from an existing
 - 83 loan term including:
 - 84 (A) an increase or decrease in an interest rate;
 - 85 (B) a change to the type of interest rate;
 - 86 (C) an increase or decrease in the principal amount of the residential mortgage loan;
 - 87 (D) a change in the number of required period payments;
 - 88 (E) an addition of collateral;
 - 89 (F) a change to, or addition of, a prepayment penalty;

- 90 (G) an addition of a cosigner; or
- 91 (H) a change in persons obligated under the existing residential mortgage loan; or
- 92 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

93 or

- 94 (b) as an employee or agent of another person:
 - 95 (i) solicit, or offer that the other person will engage in an act described in Subsection
 - 96 (15)(a); or
 - 97 (ii) negotiate terms in relationship to an act described in Subsection (15)(a).

98 (16) "Main office" means the address which a principal broker designates with the
99 division as the principal broker's primary brokerage office.

100 (17) "Management agreement" means an agreement between a person and each owner
101 of an undivided fractionalized long-term estate in a piece of real property under which the
102 person agrees to manage the leasing or operations of the real property.

103 (18) "Master lease" means an agreement under which a person is granted a leasehold
104 interest in real property and may sublease all or a portion of the real property to one or more
105 persons.

106 (19) "Master lease tenant" means the lessee in a master lease.

107 [~~17~~] (20) "Person" means an individual or entity.

108 [~~18~~] (21) "Principal broker" means an individual who is licensed as a principal broker
109 under this chapter and who:

110 (a) (i) sells or lists for sale real estate, including real estate being sold as part of a
111 foreclosure rescue, or a business opportunity with the expectation of receiving valuable
112 consideration;

113 (ii) buys, exchanges, or auctions real estate, an option on real estate, a business
114 opportunity, or an improvement on real estate with the expectation of receiving valuable
115 consideration; or

116 (iii) advertises, offers, attempts, or otherwise holds the individual out to be engaged in
117 the business described in Subsection [~~18~~] (21)(a)(i) or (ii);

118 (b) is employed by or on behalf of the owner of real estate or by a prospective
119 purchaser of real estate and performs an act described in Subsection [~~18~~] (21)(a), whether the
120 individual's compensation is at a stated salary, a commission basis, upon a salary and

121 commission basis, or otherwise;

122 (c) (i) with the expectation of receiving valuable consideration, manages property
123 owned by another person; or

124 (ii) advertises or otherwise holds the individual out to be engaged in property
125 management;

126 (d) with the expectation of receiving valuable consideration, assists or directs in the
127 procurement of prospects for or the negotiation of a transaction listed in Subsections [~~(18)~~]
128 (21)(a) and (c);

129 (e) except for a mortgage lender, title insurance producer, or an employee of a
130 mortgage lender or title insurance producer, assists or directs in the closing of a real estate
131 transaction with the expectation of receiving valuable consideration; or

132 (f) (i) engages in foreclosure rescue; or

133 (ii) advertises, offers, attempts, or otherwise holds the person out as being engaged in
134 foreclosure rescue.

135 [~~(19)~~] (22) (a) "Property management" means engaging in, with the expectation of
136 receiving valuable consideration, the management of real estate owned by another person or
137 advertising or otherwise claiming to be engaged in property management by:

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

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

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

143 (b) "Property management" does not include:

144 (i) hotel or motel management;

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

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

151 [~~(20)~~] (23) "Real estate" includes leaseholds and business opportunities involving real

152 property.

153 ~~[(21)]~~ (24) (a) "Regular salaried employee" means an individual who performs a
154 service for wages or other remuneration, whose employer withholds federal employment taxes
155 under a contract of hire, written or oral, express or implied.

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

158 ~~[(22)]~~ (25) "Reinstatement" means restoring a license that has expired or has been
159 suspended.

160 ~~[(23)]~~ (26) "Reissuance" means the process by which a licensee may obtain a license
161 following revocation of the license.

162 ~~[(24)]~~ (27) "Renewal" means extending a license for an additional licensing period on
163 or before the date the license expires.

164 ~~[(25)]~~ (28) "Sales agent" means an individual who is:

165 (a) affiliated with a principal broker, either as an independent contractor or an
166 employee as provided in Section 61-2f-303, to perform for valuable consideration an act
167 described in Subsection ~~[(18)]~~ (21); and

168 (b) licensed under this chapter as a sales agent.

169 (29) "Sponsor" means a person who is the original seller of an undivided fractionalized
170 long-term estate.

171 ~~[(26)]~~ (30) (a) "Undivided fractionalized long-term estate" means an ownership interest
172 in real property by two or more persons that is:

173 (i) a tenancy in common; or

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

175 (A) a fee estate;

176 (B) a life estate; or

177 (C) other long-term estate.

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

179 Section 2. Section 61-2f-202 is amended to read:

180 **61-2f-202. Exempt persons and transactions.**

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

- 183 (i) an individual who as owner or lessor performs an act described in Subsection
184 61-2f-102[(+8)](21) with reference to real estate owned or leased by that individual;
- 185 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
186 to nonresidential real estate owned or leased by the employer, performs an act described in
187 Subsection 61-2f-102[(+8)](21)(a) or (b);
- 188 (iii) a regular salaried employee of the owner of real estate who performs property
189 management services with reference to real estate owned by the employer, except that the
190 employee may only manage real estate for one employer;
- 191 (iv) an individual who performs property management services for the apartments at
192 which that individual resides in exchange for free or reduced rent on that individual's
193 apartment;
- 194 (v) a regular salaried employee of a condominium homeowners' association who
195 manages real estate subject to the declaration of condominium that established the
196 condominium homeowners' association, except that the employee may only manage real estate
197 for one condominium homeowners' association; and
- 198 (vi) a regular salaried employee of a licensed property management company who
199 performs support services, as prescribed by rule, for the property management company.
- 200 (b) Subsection (1)(a) does not exempt from licensing:
- 201 (i) an employee engaged in the sale of real estate regulated under:
- 202 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or
- 203 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 204 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
205 Chapter 23, Real Estate Cooperative Marketing Act; or
- 206 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
207 transferred to that individual for the purpose of evading the application of this chapter, and not
208 for another legitimate business reason.
- 209 (2) A license under this chapter is not required for:
- 210 (a) an isolated transaction or service by an individual holding a duly executed power of
211 attorney from a property owner;
- 212 (b) services rendered by an attorney admitted to practice law in this state in performing
213 the attorney's duties as an attorney;

214 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
215 under order of a court;

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

217 (e) a public utility, officer of a public utility, or regular salaried employee of a public
218 utility, unless performance of an act described in Subsection ~~61-2f-102(18)~~(21) is in
219 connection with the sale, purchase, lease, or other disposition of real estate or investment in
220 real estate unrelated to the principal business activity of that public utility;

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

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

225 (ii) the disposal of real estate pursuant to Section 72-5-111;

226 (iii) services that constitute property management; or

227 (iv) the leasing of real estate; and

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

230 (i) in accordance with:

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

232 (I) Title 10, Utah Municipal Code; or

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

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

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

236 (II) Title 17, Counties; and

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

238 (A) the acquisition of real estate, including by eminent domain;

239 (B) the disposal of real estate;

240 (C) services that constitute property management; or

241 (D) the leasing of real estate.

242 (3) A license under this chapter is not required for an individual registered to act as a
243 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
244 sale or the offer for sale of real estate if:

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

247 (ii) the security is registered for sale in accordance with:

248 (A) the Securities Act of 1933; or

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

250 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
251 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
252 D, Rule 506, 17 C.F.R. Sec. 230.506; and

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

254 Section 3. Section **61-2f-307** is repealed and reenacted to read:

255 **61-2f-307. Required disclosures.**

256 (1) A licensee or certificate holder under this chapter who sells or offers to sell an
257 undivided fractionalized long-term estate shall provide each prospective purchaser a written
258 disclosure that:

259 (a) if applicable:

260 (i) includes a copy of the master lease agreement; and

261 (ii) states whether the sponsor is the master lease tenant or an affiliate of the master
262 lease tenant;

263 (b) includes any material information that relates to a current lease or sublease that
264 affects the real property in which the undivided fractionalized long-term estate is offered;

265 (c) includes a copy of:

266 (i) a tenants in common agreement; or

267 (ii) an agreement that forms the substance of the undivided fractionalized long-term
268 estate and includes a definition of the undivided fractionalized interest;

269 (d) describes any improvements to the real property in which the undivided
270 fractionalized long-term estate is offered;

271 (e) includes a copy of any management agreement; and

272 (f) describes the relationship, if any, between each property manager and the sponsor.

273 (2) A licensee or certificate holder shall provide the written disclosure described in
274 Subsection (1) to the prospective purchaser at least 48 hours before the prospective purchaser
275 signs an agreement to purchase the undivided fractionalized long-term estate.

276 (3) Except as provided in Subsection (1), the commission may not require a licensee or
277 a certificate holder to make disclosures that are unique to the sale or offer of an undivided
278 fractionalized long-term estate.

Legislative Review Note
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Office of Legislative Research and General Counsel