

HB0096S01 compared with HB0096

~~{deleted text}~~ shows text that was in HB0096 but was deleted in HB0096S01.

inserted text shows text that was not in HB0096 but was inserted into HB0096S01.

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Representative Brian M. Greene proposes the following substitute bill:

REAL ESTATE TRANSACTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ enacts the Undivided Fractionalized Long-Term Estate Sales Practices Act;
- ▶ defines terms;
- ▶ provides ~~{that a real estate licensee or certificate holder shall make certain disclosures to each prospective purchaser when the licensee or certificate holder sells or offers to sell}~~ licensing and disclosure requirements for the sale or offer of an undivided fractionalized long-term estate;
- ▶ addresses the ~~{Real Estate Commission's}~~ Division of Real Estate's rulemaking.

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investigatory, and enforcement powers:

- ▶ provides procedures to enforce compliance with the provisions of this bill;
- ▶ repeals certain disclosure requirements and rulemaking authority relating to the sale or offer of an undivided fractionalized long-term estate ~~{by a real estate licensee}~~; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-1-13, as last amended by Laws of Utah 2011, Chapters 317, 319, and 354

61-2-201, as last amended by Laws of Utah 2011, Chapter 289

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

~~{61-2f-202}~~61-2f-103, as last amended by Laws of Utah ~~{2013, Chapter 292~~

~~REPEALS AND REENACTS}~~2014, Chapter 350

ENACTS:

57-28-101, Utah Code Annotated 1953

57-28-102, Utah Code Annotated 1953

57-28-201, Utah Code Annotated 1953

57-28-202, Utah Code Annotated 1953

57-28-203, Utah Code Annotated 1953

57-28-301, Utah Code Annotated 1953

57-28-302, Utah Code Annotated 1953

57-28-303, Utah Code Annotated 1953

57-28-304, Utah Code Annotated 1953

57-28-305, Utah Code Annotated 1953

REPEALS:

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

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

Section 1. Section 57-28-101 is enacted to read:

CHAPTER 28. UNDIVIDED FRACTIONALIZED LONG-TERM ESTATE

SALES PRACTICES ACT

Part 1. General Provisions

57-28-101. Title.

(1) This chapter is known as the "Undivided Fractionalized Long-Term Estate Sales Practices Act."

(2) This part is known as "General Provisions."

Section 2. Section 57-28-102 is enacted to read:

57-28-102. Definitions.

As used in this chapter:

(1) "Commission" means the Real Estate Commission created in Section 61-2f-103.

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

(3) "Division" means the Division of Real Estate created in Section 61-2-201.

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

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

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

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

(8) (a) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is:

(i) a tenancy in common; or

(ii) a fee estate.

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

Section 3. Section 57-28-201 is enacted to read:

Part 2. License and Disclosure Requirements

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57-28-201. Title.

This part is known as "License and Disclosure Requirements."

Section 4. Section 57-28-202 is enacted to read:

57-28-202. License required.

Except as provided by Section 61-2f-202, person may not offer, sell, or otherwise dispose of an undivided fractionalized long-term estate unless the person is licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, as a principal broker, associate broker, or sales agent.

Section 5. Section 57-28-203 is enacted to read:

57-28-203. Required disclosures.

(1) A person who sells or offers to sell an undivided fractionalized long-term estate shall provide each prospective purchaser a written disclosure, related to the real property in which the undivided fractionalized long-term estate is offered, that:

(a) if applicable:

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

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

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

(c) includes a copy of:

(i) a tenants in common agreement; or

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

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

(e) includes a copy of any management agreement;

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

and

(g) includes any additional information that an ordinarily prudent purchaser would consider material to deciding whether to purchase the undivided fractionalized long-term estate.

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(2) A person who sells or offers to sell an undivided fractionalized long-term estate shall provide the written disclosure described in Subsection (1) to the prospective purchaser at least 48 hours before the prospective purchaser signs an agreement to purchase the undivided fractionalized long-term estate.

(3) Notwithstanding the provisions of Title 61, Chapter 2f, Real Estate Licensing and Practices Act, neither the division nor the commission may require a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act to make disclosures to a prospective purchaser that are unique to the sale or offer of an undivided fractionalized long-term estate.

Section 6. Section 57-28-301 is enacted to read:

Part 3. Investigation and Enforcement

57-28-301. Title.

This part is known as "Investigation and Enforcement."

Section 7. Section 57-28-302 is enacted to read:

57-28-302. Rulemaking.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, the division may make rules governing:

(1) the form of the disclosures required under this chapter; and

(2) enforcement of the provisions of this chapter.

Section 8. Section 57-28-303 is enacted to read:

57-28-303. Investigatory powers and proceedings of division.

(1) The division may:

(a) conduct a public or private investigation to determine whether a person has violated or is about to violate a provision of this chapter; and

(b) require or allow a person to file a written statement with the division that relates to the facts and circumstances concerning a matter to be investigated.

(2) For the purpose of an investigation or proceeding under this chapter, the division may:

(a) administer oaths or affirmations; and

(b) upon the division's own initiative or upon the request of any party:

(i) subpoena a witness;

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(ii) compel a witness's attendance;

(iii) take evidence; or

(iv) require the production of any information or item that is relevant to the investigation, including:

(A) the existence, description, nature, custody, condition, and location of any books, electronic records, documents, or other tangible records;

(B) the identity and location of any person that has knowledge of relevant facts; or

(C) any other information or item that is reasonably calculated to lead to the discovery of material evidence.

(3) If a person fails to obey a subpoena or other request made in accordance with this section, the division may file an action in district court for an order compelling compliance.

Section 9. Section 57-28-304 is enacted to read:

57-28-304. Enforcement.

(1) (a) If the director believes that a person has been or is engaging in conduct that violates this chapter, the director:

(i) shall issue and serve upon the person a cease and desist order; and

(ii) may order the person to take any action necessary to carry out the purposes of this chapter.

(b) (i) A person served with an order under Subsection (1)(a) may request a hearing within 10 days after the day on which the person is served.

(ii) (A) If a person requests a hearing in accordance with Subsection (1)(b)(i) the director shall schedule a hearing to take place no more than 30 days after the day on which the director receives the request.

(B) The cease and desist order remains in effect pending the hearing.

(iii) If the director fails to schedule a hearing in accordance with Subsection (1)(b)(ii)(A), the cease and desist order is vacated.

(c) The division shall conduct a hearing described in Subsection (1)(b) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) After a hearing described in Subsection (1)(b):

(a) if the director finds that the person violated this chapter, the director may issue a final order making the cease and desist order permanent; or

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(b) if the director finds that the person did not violate this chapter, the director shall vacate the cease and desist order.

(3) If a person served with an order under subsection (1)(a) does not request a hearing and the person fails to comply with the director's order, the director may file suit in district court in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter.

(4) The remedies and action provided in this section are not exclusive but are in addition to any other remedies or actions available under Section 57-28-306.

Section 10. Section 57-28-305 is enacted to read:

57-28-305. Voidable agreements.

(1) (a) If a seller violates a provision of this chapter in entering into an agreement to purchase an undivided fractionalized long-term estate, the purchaser may rescind the agreement.

(b) A purchaser may rescind an agreement under Subsection (1) at any time before the closing.

(2) A purchaser who rescinds an agreement in accordance with Subsection (1) is entitled to all the consideration that the purchaser gave under the rescinded agreement.

(3) In an action to enforce a purchaser's right of rescission under Subsection (1), the court shall award costs and reasonable attorney fees to the prevailing party.

Section 11. Section 61-1-13 is amended to read:

61-1-13. Definitions.

(1) As used in this chapter:

(a) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a person specified.

(b) (i) "Agent" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

(ii) "Agent" does not include an individual who represents:

(A) an issuer, who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and who effects transactions:

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- (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);
- (II) exempted by Subsection 61-1-14(2);
- (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933; or
- (IV) with existing employees, partners, officers, or directors of the issuer; or
- (B) a broker-dealer in effecting transactions in this state limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.
- (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if the partner, officer, director, or person otherwise comes within the definition of "agent."
- (iv) "Agent" does not include a person described in Subsection (3).
- (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.
- (ii) "Broker-dealer" does not include:
 - (A) an agent;
 - (B) an issuer;
 - (C) a depository institution or trust company;
 - (D) a person who has no place of business in this state if:
 - (I) the person effects transactions in this state exclusively with or through:
 - (Aa) the issuers of the securities involved in the transactions;
 - (Bb) other broker-dealers;
 - (Cc) a depository institution, whether acting for itself or as a trustee;
 - (Dd) a trust company, whether acting for itself or as a trustee;
 - (Ee) an insurance company, whether acting for itself or as a trustee;
 - (Ff) an investment company, as defined in the Investment Company Act of 1940, whether acting for itself or as a trustee;
 - (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
 - (Hh) another financial institution or institutional buyer, whether acting for itself or as a trustee; or
 - (II) during any period of 12 consecutive months the person does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in

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Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;

(E) a general partner who organizes and effects transactions in securities of three or fewer limited partnerships, of which the person is the general partner, in any period of 12 consecutive months;

(F) a person whose participation in transactions in securities is confined to those transactions made by or through a broker-dealer licensed in this state;

(G) a person who is a principal broker or associate broker licensed in this state and who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(H) a person effecting transactions in commodity contracts or commodity options;

(I) a person described in Subsection (3); or

(J) other persons as the division, by rule or order, may designate, consistent with the public interest and protection of investors, as not within the intent of this Subsection (1)(c).

(d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

(e) "Commission" means the Securities Commission created in Section 61-1-18.5.

(f) "Commodity" means, except as otherwise specified by the division by rule:

(i) an agricultural, grain, or livestock product or byproduct, except real property or a timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property;

(ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair market value is at least 15% greater than the value of the metal it contains;

(iii) a gem or gemstone, whether characterized as precious, semi-precious, or otherwise;

(iv) a fuel, whether liquid, gaseous, or otherwise;

(v) a foreign currency; and

(vi) all other goods, articles, products, or items of any kind, except a work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner of the work.

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(g) (i) "Commodity contract" means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise.

(ii) A commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

(iii) (A) A commodity contract may not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(B) A purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(h) (i) "Commodity option" means an account, agreement, or contract giving a party to the option the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(ii) "Commodity option" does not include an option traded on a national securities exchange registered:

(A) with the Securities and Exchange Commission; or

(B) on a board of trade designated as a contract market by the Commodity Futures Trading Commission.

(i) "Depository institution" is as defined in Section 7-1-103.

(j) "Director" means the director of the division appointed in accordance with Section 61-1-18.

(k) "Division" means the Division of Securities established by Section 61-1-18.

(l) "Executive director" means the executive director of the Department of Commerce.

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(m) "Federal covered adviser" means a person who:

(i) is registered under Section 203 of the Investment Advisers Act of 1940; or

(ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of the Investment Advisers Act of 1940.

(n) "Federal covered security" means a security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of the Securities Act of 1933.

(o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

(p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt securities, or dividends as to equity securities.

(q) (i) "Investment adviser" means a person who:

(A) for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; or

(B) for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(ii) "Investment adviser" includes a financial planner or other person who:

(A) as an integral component of other financially related services, provides the investment advisory services described in Subsection (1)(q)(i) to others for compensation and as part of a business; or

(B) holds the person out as providing the investment advisory services described in Subsection (1)(q)(i) to others for compensation.

(iii) "Investment adviser" does not include:

(A) an investment adviser representative;

(B) a depository institution or trust company;

(C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the profession;

(D) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for the services;

(E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or

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business or financial publication or service, of general, regular, and paid circulation, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(F) a person who is a federal covered adviser;

(G) a person described in Subsection (3); or

(H) such other persons not within the intent of this Subsection (1)(q) as the division may by rule or order designate.

(r) (i) "Investment adviser representative" means a partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who:

(A) (I) is employed by or associated with an investment adviser who is licensed or required to be licensed under this chapter; or

(II) has a place of business located in this state and is employed by or associated with a federal covered adviser; and

(B) does any of the following:

(I) makes a recommendation or otherwise renders advice regarding securities;

(II) manages accounts or portfolios of clients;

(III) determines which recommendation or advice regarding securities should be given;

(IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

or

(V) supervises employees who perform any of the acts described in this Subsection (1)(r)(i)(B).

(ii) "Investment adviser representative" does not include a person described in Subsection (3).

(s) "Investment contract" includes:

(i) an investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor; or

(ii) an investment by which:

(A) an offeree furnishes initial value to an offerer;

(B) a portion of the initial value is subjected to the risks of the enterprise;

(C) the furnishing of the initial value is induced by the offerer's promises or

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representations that give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

(D) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

(t) "Isolated transaction" means not more than a total of two transactions that occur anywhere during six consecutive months.

(u) (i) "Issuer" means a person who issues or proposes to issue a security or has outstanding a security that it has issued.

(ii) With respect to a preorganization certificate or subscription, "issuer" means the one or more promoters of the person to be organized.

(iii) "Issuer" means the one or more persons performing the acts and assuming duties of a depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued with respect to:

(A) interests in trusts, including collateral trust certificates, voting trust certificates, and certificates of deposit for securities; or

(B) shares in an investment company without a board of directors.

(iv) With respect to an equipment trust certificate, a conditional sales contract, or similar securities serving the same purpose, "issuer" means the person by whom the equipment or property is to be used.

(v) With respect to interests in partnerships, general or limited, "issuer" means the partnership itself and not the general partner or partners.

(vi) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payment out of production under the titles or leases, "issuer" means the owner of the title or lease or right of production, whether whole or fractional, who creates fractional interests therein for the purpose of sale.

(v) (i) "Life settlement interest" means the entire interest or a fractional interest in any of the following that is the subject of a life settlement:

(A) a policy; or

(B) the death benefit under a policy.

(ii) "Life settlement interest" does not include the initial purchase from the owner by a

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life settlement provider.

- (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.
- (x) "Person" means:
 - (i) an individual;
 - (ii) a corporation;
 - (iii) a partnership;
 - (iv) a limited liability company;
 - (v) an association;
 - (vi) a joint-stock company;
 - (vii) a joint venture;
 - (viii) a trust where the interests of the beneficiaries are evidenced by a security;
 - (ix) an unincorporated organization;
 - (x) a government; or
 - (xi) a political subdivision of a government.
- (y) "Precious metal" means the following, whether in coin, bullion, or other form:
 - (i) silver;
 - (ii) gold;
 - (iii) platinum;
 - (iv) palladium;
 - (v) copper; and
 - (vi) such other substances as the division may specify by rule.

(z) "Promoter" means a person who, acting alone or in concert with one or more persons, takes initiative in founding or organizing the business or enterprise of a person.

(aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that is:

- (A) inscribed in a tangible medium; or
- (B) (I) stored in an electronic or other medium; and
- (II) retrievable in perceivable form.

(ii) This Subsection (1)(aa) does not apply when the context requires otherwise, including when "record" is used in the following phrases:

- (A) "of record";

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(B) "official record"; or

(C) "public record."

(bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

(ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

(A) a security given or delivered with or as a bonus on account of a purchase of a security or any other thing, is part of the subject of the purchase, and is offered and sold for value;

(B) a purported gift of assessable stock is an offer or sale as is each assessment levied on the stock;

(C) an offer or sale of a security that is convertible into, or entitles its holder to acquire or subscribe to another security of the same or another issuer is an offer or sale of that security, and also an offer of the other security, whether the right to convert or acquire is exercisable immediately or in the future;

(D) a conversion or exchange of one security for another constitutes an offer or sale of the security received in a conversion or exchange, and the offer to buy or the purchase of the security converted or exchanged;

(E) securities distributed as a dividend wherein the person receiving the dividend surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or sale;

(F) a dividend of a security of another issuer is an offer or sale; or

(G) the issuance of a security under a merger, consolidation, reorganization, recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the security issued as well as the offer to buy or the purchase of a security surrendered in connection therewith, unless the sole purpose of the transaction is to change the issuer's domicile.

(iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

(A) a good faith gift;

(B) a transfer by death;

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(C) a transfer by termination of a trust or of a beneficial interest in a trust;

(D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or

(E) a securities split or reverse split.

(cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this chapter.

(dd) "Securities Exchange Commission" means the United States Securities Exchange Commission created by the Securities Exchange Act of 1934.

(ee) (i) "Security" means a:

(A) note;

(B) stock;

(C) treasury stock;

(D) bond;

(E) debenture;

(F) evidence of indebtedness;

(G) certificate of interest or participation in a profit-sharing agreement;

(H) collateral-trust certificate;

(I) preorganization certificate or subscription;

(J) transferable share;

(K) investment contract;

(L) burial certificate or burial contract;

(M) voting-trust certificate;

(N) certificate of deposit for a security;

(O) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(P) commodity contract or commodity option;

(Q) interest in a limited liability company;

(R) life settlement interest; or

(S) in general, an interest or instrument commonly known as a "security," or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections

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(1)(ee)(i)(A) through (R).

(ii) "Security" does not include:

(A) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a lump sum or periodically for life or some other specified period;

(B) an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; or

(C) (I) a whole long-term estate in real property;

(II) an undivided fractionalized long-term estate in real property that consists of 10 or fewer owners; or

(III) an undivided fractionalized long-term estate in real property that consists of more than 10 owners if, when the real property estate is subject to a management agreement:

(Aa) the management agreement permits a simple majority of owners of the real property estate to not renew or to terminate the management agreement at the earlier of the end of the management agreement's current term, or 180 days after the day on which the owners give notice of termination to the manager; and

(Bb) the management agreement prohibits, directly or indirectly, the lending of the proceeds earned from the real property estate or the use or pledge of its assets to a person or entity affiliated with or under common control of the manager ~~;~~ and ~~;~~

~~[(Cc) the management agreement complies with any other requirement imposed by rule by the Real Estate Commission under Section 61-2f-103.]~~

(iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, may not establish, without more, that all members are actively engaged in the management of the limited liability company.

(ff) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(gg) ~~[(t)]~~ "Undivided fractionalized long-term estate" means ~~[an ownership interest in real property by two or more persons that is:]~~ the same as that term is defined in Section

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57-28-102.

~~[(A) a tenancy in common; or]~~

~~[(B) a fee estate.]~~

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

(hh) "Undue influence" means that a person uses a relationship or position of authority, trust, or confidence:

(i) that is unrelated to a relationship created:

(A) in the ordinary course of making investments regulated under this chapter; or

(B) by a licensee providing services under this chapter;

(ii) that results in:

(A) an investor perceiving the person as having heightened credibility, personal trustworthiness, or dependability; or

(B) the person having special access to or control of an investor's financial resources, information, or circumstances; and

(iii) to:

(A) exploit the trust, dependence, or fear of the investor;

(B) knowingly assist or cause another to exploit the trust, dependence, or fear of the investor; or

(C) gain control deceptively over the decision making of the investor.

(ii) "Vulnerable adult" means an individual whose age or mental or physical impairment substantially affects that individual's ability to:

(i) manage the individual's resources; or

(ii) comprehend the nature and consequences of making an investment decision.

(jj) "Whole long-term estate" means a person owns or persons through joint tenancy own real property through a fee estate.

(kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal holidays listed in Section 63G-1-301.

(2) A term not defined in this section shall have the meaning as established by division rule. The meaning of a term neither defined in this section nor by rule of the division shall be the meaning commonly accepted in the business community.

(3) (a) This Subsection (3) applies to the offer or sale of a real property estate

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exempted from the definition of security under Subsection (1)(ee)(ii)(C).

(b) A person who, directly or indirectly receives compensation in connection with the offer or sale as provided in this Subsection (3) of a real property estate is not an agent, broker-dealer, investment adviser, or investment adviser representative under this chapter if that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

- (i) a principal broker;
- (ii) an associate broker; or
- (iii) a sales agent.

Section 12. Section 61-2-201 is amended to read:

61-2-201. Division of Real Estate created -- Director appointed -- Personnel.

(1) There is created within the department a Division of Real Estate. The division is responsible for the administration and enforcement of:

- (a) this chapter;
- (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;

(e) Title 57, Chapter 28, Undivided Fractionalized Long-Term Estate Sales Practices

Act;

~~(e)~~(f) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

~~(f)~~(g) Chapter 2e, Appraisal Management Company Registration and Regulation Act;

~~(g)~~(h) Chapter 2f, Real Estate Licensing and Practices Act; and

~~(h)~~(i) Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

(2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds the office of director at the pleasure of the governor.

(3) The director, with the approval of the executive director, may employ personnel necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Administrative Services.

Section ~~(1)~~13. Section **61-2f-102** is amended to read:

61-2f-102. Definitions.

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As used in this chapter:

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

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

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

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

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

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

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

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

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

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

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

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

~~(7)~~ (9) "Condominium unit" ~~is as~~ means the same as that term is defined in Section 57-8-3.

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

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

(12) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) a company;

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- (e) an association;
- (f) a joint venture;
- (g) a business trust;
- (h) a trust; or
- (i) any organization similar to an entity described in Subsections (12)(a) through (h).

(13) "Executive director" means the director of the Department of Commerce.

(14) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:

(a) engage, or offer to engage, in an act that:

- (i) the person represents will assist a borrower in preventing a foreclosure; and
- (ii) relates to a transaction involving the transfer of title to residential real property; or

(b) as an employee or agent of another person:

(i) solicit, or offer that the other person will engage in an act described in Subsection (14)(a); or

(ii) negotiate terms in relationship to an act described in Subsection (14)(a).

(15) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:

(a) act, or offer to act, on behalf of a person to:

(i) obtain a loan term of a residential mortgage loan that is different from an existing loan term, including:

- (A) an increase or decrease in an interest rate;
- (B) a change to the type of interest rate;
- (C) an increase or decrease in the principal amount of the residential mortgage loan;
- (D) a change in the number of required period payments;
- (E) an addition of collateral;
- (F) a change to, or addition of, a prepayment penalty;
- (G) an addition of a cosigner; or
- (H) a change in persons obligated under the existing residential mortgage loan; or
- (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

or

(b) as an employee or agent of another person:

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(i) solicit, or offer that the other person will engage in an act described in Subsection (15)(a); or

(ii) negotiate terms in relationship to an act described in Subsection (15)(a).

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

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

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

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

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

~~{(18)}{(21)}~~ "Principal broker" means an individual who is licensed as a principal broker under this chapter and who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Property management" does not include:

(i) hotel or motel management;

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

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

~~(20)~~ ~~(23)~~ "Real estate" includes leaseholds and business opportunities involving real property.

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

(b) "Regular salaried employee" does not include an individual who performs services

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on a project-by-project basis or on a commission basis.

~~§§(22)§(25)~~ "Reinstatement" means restoring a license that has expired or has been suspended.

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

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

~~§§(25)§(28)~~ "Sales agent" means an individual who is:

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

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

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

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

~~[(i) a tenancy in common; or]~~

~~[(ii) any other legal form of undivided estate in real property including:]~~

~~[(A) a fee estate;]~~

~~[(B) a life estate; or]~~

~~[(C) other long-term estate.]~~

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

Section 14. Section 61-2f-103 is amended to read:

61-2f-103. Real Estate Commission.

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

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for the administration of this chapter that are not inconsistent with this chapter, including:

(i) licensing of:

(A) a principal broker;

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- (B) an associate broker; and
- (C) a sales agent;
- (ii) registration of:
 - (A) an entity; and
 - (B) a branch office;
- (iii) prelicensing and postlicensing education curricula;
- (iv) examination procedures;
- (v) the certification and conduct of:
 - (A) a real estate school;
 - (B) a course provider; or
 - (C) an instructor;
- (vi) proper handling of money received by a licensee under this chapter;
- (vii) brokerage office procedures and recordkeeping requirements;
- (viii) property management;
- (ix) standards of conduct for a licensee under this chapter; and
- ~~[(x) a rule made under Section 61-2f-307 regarding an undivided fractionalized long-term estate; and]~~
- ~~[(xi)]~~ (x) if the commission determines necessary, a rule as provided in Subsection 61-2f-306(3) regarding a legal form;
- (b) establish, with the concurrence of the division, a fee provided for in this chapter, except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;
- (c) conduct an administrative hearing not delegated by the commission to an administrative law judge or the division relating to the:
 - (i) licensing of an applicant;
 - (ii) conduct of a licensee;
 - (iii) the certification or conduct of a 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 a sanction as provided in Section 61-2f-404;
- (e) advise the director on the administration and enforcement of a matter affecting the

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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 this chapter.

(2) (a) Except as provided in Subsection (2)(b), a state entity may not, without the concurrence of the commission, make a rule that changes the rights, duties, or obligations of buyers, sellers, or persons licensed under this chapter in relation to a real estate transaction between private parties.

(b) Subsection (2)(a) does not apply to a rule made:

- (i) under Title 31A, Insurance Code, or Title 7, Financial Institutions Act; or
- (ii) by the Department of Commerce or any division or other rulemaking body within

the Department of Commerce.

(3) (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) The governor may not appoint a commission member described in Subsection (3)(b) who, at the time of appointment, resides in the same county in the state as another commission member.

(e) At least one commission member described in Subsection (3)(b) shall at the time of an appointment reside in a county that is not a county of the first or second class.

(4) (a) Except as required by Subsection (4)(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 (4)(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

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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.

(5) When a vacancy occurs in the membership for any reason, the governor, with the consent of the Senate, shall appoint a replacement for the unexpired term.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) (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.

(8) Three members of the commission constitute a quorum for the transaction of business.

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

~~———— 61-2f-202. Exempt persons and transactions:~~

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

~~———— (i) an individual who as owner or lessor performs an act described in Subsection 61-2f-102[(18)](21) with reference to real estate owned or leased by that individual;~~

~~———— (ii) a regular salaried employee of the owner or lessor of real estate who, with reference to nonresidential real estate owned or leased by the employer, performs an act described in Subsection 61-2f-102[(18)](21)(a) or (b);~~

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

~~———— (iv) an individual who performs property management services for the apartments at~~

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~~which that individual resides in exchange for free or reduced rent on that individual's apartment;~~

~~—— (v) a regular salaried employee of a condominium homeowners' association who manages real estate subject to the declaration of condominium that established the condominium homeowners' association, except that the employee may only manage real estate for one condominium homeowners' association; and~~

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

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

~~—— (i) an employee engaged in the sale of real estate regulated under:~~

~~—— (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or~~

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

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

~~—— (iii) an individual whose interest as an owner or lessor is obtained by that individual or transferred to that individual for the purpose of evading the application of this chapter, and not for another legitimate business reason.~~

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

~~—— (a) an isolated transaction or service by an individual holding a duly executed power of attorney from a property owner;~~

~~—— (b) services rendered by an attorney admitted to practice law in this state in performing the attorney's duties as an attorney;~~

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

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

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

~~—— (f) a regular salaried employee or authorized agent working under the oversight of the Department of Transportation when performing an act on behalf of the Department of~~

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~~Transportation in connection with one or more of the following:~~

- ~~—— (i) the acquisition of real estate pursuant to Section 72-5-103;~~
- ~~—— (ii) the disposal of real estate pursuant to Section 72-5-111;~~
- ~~—— (iii) services that constitute property management; or~~
- ~~—— (iv) the leasing of real estate; and~~
- ~~—— (g) a regular salaried employee of a county, city, or town when performing an act on behalf of the county, city, or town:~~

~~—— (i) in accordance with:~~

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

~~—— (I) Title 10, Utah Municipal Code; or~~

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

~~—— (B) if a regular salaried employee of a county:~~

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

~~—— (II) Title 17, Counties; and~~

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

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

~~—— (B) the disposal of real estate;~~

~~—— (C) services that constitute property management; or~~

~~—— (D) the leasing of real estate.~~

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

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

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

~~—— (A) the Securities Act of 1933; or~~

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

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

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

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

~~61-2f-307. Required disclosures:~~

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

~~(a) if applicable:~~

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

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

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

~~(c) includes a copy of:~~

~~(i) a tenants in common agreement; or~~

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

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

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

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

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

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

Legislative Review Note

~~as of 1-6-15 1:28 PM~~

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~~Office of Legislative Research and General Counsel~~ **15. Repealer.**

This bill repeals:

Section 61-2f-307, Rulemaking required for offer or sale of an undivided fractionalized long-term estate -- Disclosures -- Management agreement.