

1 **TIMESHARE AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: Stephen H. Urquhart

6
7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Timeshare and Camp Resort Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ addresses the process for obtaining a registration from the division for a
14 development or a salesperson;
- 15 ▶ modifies notice requirements related to a purchaser's right to cancel;
- 16 ▶ clarifies the process and standard for obtaining an exemption from the provisions of
17 this bill; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **57-8-3**, as last amended by Laws of Utah 2013, Chapters 95 and 152

26 **57-8-27**, as last amended by Laws of Utah 2012, Chapter 166

27 **57-19-2**, as last amended by Laws of Utah 2012, Chapter 166



- 28 [57-19-4](#), as enacted by Laws of Utah 1987, Chapter 73
- 29 [57-19-5](#), as last amended by Laws of Utah 2009, Chapter 352
- 30 [57-19-6](#), as last amended by Laws of Utah 2012, Chapter 166
- 31 [57-19-7](#), as enacted by Laws of Utah 1987, Chapter 73
- 32 [57-19-8](#), as last amended by Laws of Utah 2012, Chapter 166
- 33 [57-19-9](#), as last amended by Laws of Utah 2000, Chapter 86
- 34 [57-19-10](#), as enacted by Laws of Utah 1987, Chapter 73
- 35 [57-19-11](#), as last amended by Laws of Utah 1991, Chapter 165
- 36 [57-19-12](#), as last amended by Laws of Utah 2012, Chapter 166
- 37 [57-19-13](#), as last amended by Laws of Utah 2012, Chapter 166
- 38 [57-19-14](#), as last amended by Laws of Utah 2010, Chapter 379
- 39 [57-19-15](#), as last amended by Laws of Utah 2009, Chapter 352
- 40 [57-19-16](#), as last amended by Laws of Utah 2009, Chapter 352
- 41 [57-19-21](#), as enacted by Laws of Utah 1987, Chapter 73
- 42 [57-19-26](#), as last amended by Laws of Utah 2012, Chapter 166



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

45 Section 1. Section [57-8-3](#) is amended to read:

46 **57-8-3. Definitions.**

47 As used in this chapter:

48 (1) "Assessment" means any charge imposed by the association, including:

49 (a) common expenses on or against a unit owner pursuant to the provisions of the
50 declaration, bylaws, or this chapter; and

51 (b) an amount that an association of unit owners assesses to a unit owner under
52 Subsection [57-8-43\(9\)\(g\)](#).

53 (2) "Association of unit owners" means all of the unit owners:

54 (a) acting as a group in accordance with the declaration and bylaws; or

55 (b) organized as a legal entity in accordance with the declaration.

56 (3) "Building" means a building, containing units, and comprising a part of the
57 property.

58 (4) "Commercial condominium project" means a condominium project that has no

59 residential units within the project.

60 (5) "Common areas and facilities" unless otherwise provided in the declaration or
61 lawful amendments to the declaration means:

62 (a) the land included within the condominium project, whether leasehold or in fee
63 simple;

64 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
65 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

66 (c) the basements, yards, gardens, parking areas, and storage spaces;

67 (d) the premises for lodging of janitors or persons in charge of the property;

68 (e) installations of central services such as power, light, gas, hot and cold water,
69 heating, refrigeration, air conditioning, and incinerating;

70 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
71 apparatus and installations existing for common use;

72 (g) such community and commercial facilities as may be provided for in the
73 declaration; and

74 (h) all other parts of the property necessary or convenient to its existence, maintenance,
75 and safety, or normally in common use.

76 (6) "Common expenses" means:

77 (a) all sums lawfully assessed against the unit owners;

78 (b) expenses of administration, maintenance, repair, or replacement of the common
79 areas and facilities;

80 (c) expenses agreed upon as common expenses by the association of unit owners; and

81 (d) expenses declared common expenses by this chapter, or by the declaration or the
82 bylaws.

83 (7) "Common profits," unless otherwise provided in the declaration or lawful
84 amendments to the declaration, means the balance of all income, rents, profits, and revenues
85 from the common areas and facilities remaining after the deduction of the common expenses.

86 (8) "Condominium" means the ownership of a single unit in a multiunit project
87 together with an undivided interest in common in the common areas and facilities of the
88 property.

89 (9) "Condominium plat" means a plat or plats of survey of land and units prepared in

90 accordance with Section [57-8-13](#).

91 (10) "Condominium project" means a real estate condominium project; a plan or
92 project whereby two or more units, whether contained in existing or proposed apartments,
93 commercial or industrial buildings or structures, or otherwise, are separately offered or
94 proposed to be offered for sale. Condominium project also means the property when the
95 context so requires.

96 (11) "Condominium unit" means a unit together with the undivided interest in the
97 common areas and facilities appertaining to that unit. Any reference in this chapter to a
98 condominium unit includes both a physical unit together with its appurtenant undivided interest
99 in the common areas and facilities and a time period unit together with its appurtenant
100 undivided interest, unless the reference is specifically limited to a time period unit.

101 (12) "Contractible condominium" means a condominium project from which one or
102 more portions of the land within the project may be withdrawn in accordance with provisions
103 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or
104 termination of one or more leases, then the condominium project is not a contractible
105 condominium within the meaning of this chapter.

106 (13) "Convertible land" means a building site which is a portion of the common areas
107 and facilities, described by metes and bounds, within which additional units or limited common
108 areas and facilities may be created in accordance with this chapter.

109 (14) "Convertible space" means a portion of the structure within the condominium
110 project, which portion may be converted into one or more units or common areas and facilities,
111 including limited common areas and facilities in accordance with this chapter.

112 (15) "Declarant" means all persons who execute the declaration or on whose behalf the
113 declaration is executed. From the time of the recordation of any amendment to the declaration
114 expanding an expandable condominium, all persons who execute that amendment or on whose
115 behalf that amendment is executed shall also come within this definition. Any successors of
116 the persons referred to in this subsection who come to stand in the same relation to the
117 condominium project as their predecessors also come within this definition.

118 (16) "Declaration" means the instrument by which the property is submitted to the
119 provisions of this act, as it from time to time may be lawfully amended.

120 (17) "Expandable condominium" means a condominium project to which additional

121 land or an interest in it may be added in accordance with the declaration and this chapter.

122 (18) "Governing documents":

123 (a) means a written instrument by which an association of unit owners may:

124 (i) exercise powers; or

125 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
126 association of unit owners; and

127 (b) includes:

128 (i) articles of incorporation;

129 (ii) bylaws;

130 (iii) a plat;

131 (iv) a declaration of covenants, conditions, and restrictions; and

132 (v) rules of the association of unit owners.

133 (19) "Independent third party" means a person that:

134 (a) is not related to the unit owner;

135 (b) shares no pecuniary interests with the unit owner; and

136 (c) purchases the unit in good faith and without the intent to defraud a current or future
137 lienholder.

138 (20) "Leasehold condominium" means a condominium project in all or any portion of
139 which each unit owner owns an estate for years in his unit, or in the land upon which that unit
140 is situated, or both, with all those leasehold interests to expire naturally at the same time. A
141 condominium project including leased land, or an interest in the land, upon which no units are
142 situated or to be situated is not a leasehold condominium within the meaning of this chapter.

143 (21) "Limited common areas and facilities" means those common areas and facilities
144 designated in the declaration as reserved for use of a certain unit or units to the exclusion of the
145 other units.

146 (22) "Majority" or "majority of the unit owners," unless otherwise provided in the
147 declaration or lawful amendments to the declaration, means the owners of more than 50% in
148 the aggregate in interest of the undivided ownership of the common areas and facilities.

149 (23) "Management committee" means the committee as provided in the declaration
150 charged with and having the responsibility and authority to make and to enforce all of the
151 reasonable rules covering the operation and maintenance of the property.

152 (24) "Mixed-use condominium project" means a condominium project that has both
153 residential and commercial units in the condominium project.

154 (25) "Par value" means a number of dollars or points assigned to each unit by the
155 declaration. Substantially identical units shall be assigned the same par value, but units located
156 at substantially different heights above the ground, or having substantially different views, or
157 having substantially different amenities or other characteristics that might result in differences
158 in market value, may be considered substantially identical within the meaning of this
159 subsection. If par value is stated in terms of dollars, that statement may not be considered to
160 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
161 fair market transaction at a different figure may affect the par value of any unit, or any
162 undivided interest in the common areas and facilities, voting rights in the unit owners'
163 association, liability for common expenses, or right to common profits, assigned on the basis
164 thereof.

165 (26) "Person" means an individual, corporation, partnership, association, trustee, or
166 other legal entity.

167 (27) "Property" means the land, whether leasehold or in fee simple, the building, if any,
168 all improvements and structures thereon, all easements, rights, and appurtenances belonging
169 thereto, and all articles of personal property intended for use in connection therewith.

170 (28) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title
171 57, Chapter 3, Recording of Documents.

172 (29) "Size" means the number of cubic feet, or the number of square feet of ground or
173 floor space, within each unit as computed by reference to the record of survey map and rounded
174 off to a whole number. Certain spaces within the units including attic, basement, or garage
175 space may be omitted from the calculation or be partially discounted by the use of a ratio, if the
176 same basis of calculation is employed for all units in the condominium project and if that basis
177 is described in the declaration.

178 (30) "Time period unit" means an annually recurring part or parts of a year specified in
179 the declaration as a period for which a unit is separately owned and includes a timeshare estate
180 as defined in Subsection 57-19-2[(19)].

181 (31) "Unit" means either a separate physical part of the property intended for any type
182 of independent use, including one or more rooms or spaces located in one or more floors or

183 part or parts of floors in a building or a time period unit, as the context may require. A
184 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
185 proposed condominium unit under an expandable condominium project, not constructed, is a
186 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

187 (32) "Unit number" means the number, letter, or combination of numbers and letters
188 designating the unit in the declaration and in the record of survey map.

189 (33) "Unit owner" means the person or persons owning a unit in fee simple and an
190 undivided interest in the fee simple estate of the common areas and facilities in the percentage
191 specified and established in the declaration or, in the case of a leasehold condominium project,
192 the person or persons whose leasehold interest or interests in the condominium unit extend for
193 the entire balance of the unexpired term or terms.

194 Section 2. Section 57-8-27 is amended to read:

195 **57-8-27. Separate taxation.**

196 (1) Each unit and its percentage of undivided interest in the common or community
197 areas and facilities shall be considered to be a parcel and shall be subject to separate
198 assessment and taxation by each assessing unit, local district, and special service district for all
199 types of taxes authorized by law, including ad valorem levies and special assessments. Neither
200 the building or buildings, the property, nor any of the common areas and facilities may be
201 considered a parcel.

202 (2) In the event any of the interests in real property made subject to this chapter by the
203 declaration are leasehold interests, if the lease creating these interests is of record in the office
204 of the county recorder, if the balance of the term remaining under the lease is at least 40 years
205 at the time the leasehold interest is made subject to this chapter, if units are situated or are to be
206 situated on or within the real property covered by the lease, and if the lease provides that the
207 lessee shall pay all taxes and assessments imposed by governmental authority, then until 10
208 years prior to the date that the leasehold is to expire or until the lease is terminated, whichever
209 first occurs, all taxes and assessments on the real property covered by the lease shall be levied
210 against the owner of the lessee's interest. If the owner of the reversion under the lease has
211 executed the declaration and condominium plat, until 10 years prior to the date that the
212 leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and
213 assessments on the real property covered by the lease shall be separately levied against the unit

214 owners having an interest in the lease, with each unit owner for taxation purposes being
 215 considered the owner of a parcel consisting of his undivided condominium interest in the fee of
 216 the real property affected by the lease.

217 (3) No forfeiture or sale of the improvements or the property as a whole for delinquent
 218 real estate taxes, special assessments, or charges shall divest or in anywise affect the title to an
 219 individual unit if the real estate taxes or duly levied share of the assessments and charges on the
 220 individual unit are currently paid.

221 (4) Any exemption from taxes that may exist on real property or the ownership of the
 222 property may not be denied by virtue of the submission of the property to this chapter.

223 (5) Timeshare interests and timeshare estates, as defined in Subsection 57-19-2~~[(19)]~~,
 224 may not be separately taxed but shall be valued, assessed, and taxed at the unit level. The
 225 value of timeshare interests and timeshare estates, for purposes of ad valorem taxation, shall be
 226 determined by valuing the real property interest associated with the timeshare interest or
 227 timeshare estate, exclusive of the value of any intangible property and rights associated with
 228 the acquisition, operation, ownership, and use of the timeshare interest or timeshare estate,
 229 including the fees and costs associated with the sale of timeshare interests and timeshare estates
 230 that exceed those fees and costs normally incurred in the sale of other similar properties, the
 231 fees and costs associated with the operation, ownership, and use of timeshare interests and
 232 timeshare estates, vacation exchange rights, vacation conveniences and services, club
 233 memberships, and any other intangible rights and benefits available to a timeshare unit owner.
 234 Nothing in this section shall be construed as requiring the assessment of any real property
 235 interest associated with a timeshare interest or timeshare estate at less than its fair market
 236 value. Notice of assessment, delinquency, sale, or any other purpose required by law is
 237 considered sufficient for all purposes if the notice is given to the management committee.

238 Section 3. Section 57-19-2 is amended to read:

239 **57-19-2. Definitions.**

240 As used in this chapter~~[, unless the context clearly requires otherwise]:~~

241 (1) ~~["Accommodations" includes]~~ "Accommodation" means:

242 (a) a hotel or motel ~~[rooms;]~~ room;

243 (b) a condominium or cooperative ~~[units, cabins, lodges, apartments, and]~~ unit;

244 (c) a cabin;

245 (d) a lodge;
 246 (e) an apartment; or
 247 (f) a private or commercial [~~structures~~] structure designed for overnight occupancy by

248 one or more individuals.

249 (2) "Advertisement" means a written, printed, oral, audio, electronic, or visual offer
 250 that:

251 (a) is made by direct or general solicitation[-] to one or more individuals; and

252 (b) (i) contains an offer to sell an interest; or

253 (ii) contains a solicitation to visit or obtain additional information about a
 254 development.

255 (3) "Amendment" means a change to an approved registration that is required under
 256 Section [57-19-9](#) or by a division rule made under this chapter.

257 [~~(3)~~] (4) "Association" means an organized body consisting solely of owners of
 258 timeshare interests in a timeshare development [~~that has been registered with the division~~],
 259 including developers or purchasers.

260 [~~(4)~~] (5) "Business day" means a day other than a Saturday, Sunday, or state or federal
 261 holiday.

262 [~~(7)~~] (6) "Camping site" means a space designed or promoted for the purpose of
 263 locating a trailer, tent, tent trailer, recreational vehicle, pickup camper, motor home, or other
 264 similar device used for land-based portable housing.

265 [~~(5)~~] (7) "Camp resort" means [~~any~~] an enterprise that has as its primary purpose the
 266 offering of a camp resort interest.

267 [~~(6)~~] (8) "Camp resort interest" means the right to use and occupy a camping site.

268 (9) "Consolidation" means the registration of one or more additional sites or interests
 269 in a development after the division approves the development's registration.

270 [~~(8)~~] (10) "Developer" means a person [~~who~~] that:

271 (a) establishes, [~~promotes~~], owns, offers, sells, or operates a timeshare development or
 272 camp resort; or

273 (b) engages one or more other persons to establish, [~~promote~~] own, offer, sell, or
 274 operate a timeshare development or camp resort on the person's behalf.

275 (11) (a) "Development" means an enterprise with the primary purpose of offering an

276 interest in a camp resort or timeshare development.

277 (b) "Development" includes:

278 (i) a single-site development; or

279 (ii) a multiple-site development.

280 ~~[(9)]~~ (12) "Director" means the director of the division.

281 (13) "Direct sales presentation" means an in-person, telephonic, or Internet-based
282 communication that presents an offer to purchase an interest in a development to one or more
283 prospective purchasers.

284 ~~[(10)]~~ (14) "Division" means the Division of Real Estate of the Department of
285 Commerce.

286 ~~[(11)]~~ (15) "Executive director" means the executive director of the Department of
287 Commerce.

288 ~~[(12)]~~ (16) (a) "Interest" means [a camp resort interest or a timeshare interest.] a right
289 that a purchaser receives in exchange for consideration to use and occupy a camping site or an
290 accommodation in a development:

291 (i) on a recurring basis; and

292 (ii) for a period of time that is less than one year during any given year, regardless of
293 whether the time is determined in advance.

294 (b) "Interest" includes a membership agreement, sale, lease, deed, license, or
295 right-to-use agreement.

296 ~~[(13)]~~ (17) "Offer" means a solicitation solely intended to result in a person purchasing
297 an interest in a [project] development.

298 ~~[(14)]~~ "Project" means a camp resort or timeshare development.]

299 (18) "Property report" means the form of a written disclosure described in Section
300 [57-19-11](#).

301 ~~[(15)]~~ (19) "Purchaser" means a person who purchases an interest in a [project]
302 development.

303 (20) "Registration" means:

304 (a) for a development, an approved application for registration described in Section
305 [57-19-5](#); or

306 (b) for a salesperson, an approved application for registration described in Section

307 [57-19-15](#).

308 (21) "Renewal" or "renew" means extending a development's or a salesperson's
 309 registration for an additional period on or before the registration's expiration date.

310 ~~[(16)]~~ (22) (a) "Sale" or "sell" means selling an interest in a [project] development for
 311 value. [It]

312 (b) "Sale" or "sell" does not include charging a reasonable fee to offset the
 313 administrative costs of transferring an interest in a [project] development.

314 ~~[(17)]~~ (23) (a) "Salesperson" means an individual who, for compensation and as agent
 315 for another, is engaged in obtaining commitments of persons to purchase an interest in a
 316 [project] development by making direct sales presentations to those persons. [It]

317 (b) "Salesperson" does not include [purchasers] a purchaser or [members] an owner of
 318 a timeshare interest engaged in the referral of persons without making a direct sales
 319 presentation [to them].

320 (24) (a) "Site" means a geographic location where one or more camping sites or
 321 accommodations are located.

322 (b) "Site" includes a geographic location where one or more camping sites or
 323 accommodations are located that is constructed in phases and is under common management.

324 ~~[(18)]~~ (25) "Timeshare development" means [any] an enterprise [that has as its] with
 325 the primary purpose [the] of offering [of] a timeshare interest, including [a project in which the
 326 purchase of] an interest that gives the purchaser the right to use and occupy an accommodation
 327 at [one specific site or more than one site] a single or multiple-site development.

328 (26) "Timeshare estate" means a small, undivided fractional fee interest in real property
 329 by which the purchaser does not receive any right to use an accommodation except as provided
 330 by contract, declaration, or other instrument defining a legal right.

331 ~~[(19)]~~ (27) (a) "Timeshare interest" means a right to occupy fixed or variable
 332 accommodations during three or more separate fixed or variable time periods over a period of
 333 at least three years, including renewal options, whether or not coupled with an estate in land.
 334 [It]

335 (b) "Timeshare interest" includes [what is commonly known as a"] a timeshare
 336 estate[," which is a small undivided fractional fee interest in real property by which the
 337 purchaser does not receive any right to use accommodations except as provided by contract,

338 ~~declaration, or other instrument defining a legal right].~~

339 Section 4. Section **57-19-4** is amended to read:

340 **57-19-4. Unregistered sales prohibited.**

341 Except ~~[for transactions exempt under]~~ as provided in Section **57-19-26**, it is unlawful
342 for ~~[any]~~ a person to offer or sell in this state an interest in a ~~[project]~~ development unless the
343 ~~[project]~~ development is registered under this chapter or holds a temporary permit described in
344 Section **57-19-6**.

345 Section 5. Section **57-19-5** is amended to read:

346 **57-19-5. Registration -- Filing application.**

347 (1) A person may apply for registration of a ~~[project]~~ development by filing with the
348 ~~[director]~~ division:

349 (a) an application in the form prescribed by the director;

350 (b) the written disclosure ~~[required to be furnished to prospective purchasers by]~~
351 described in Section **57-19-11**; and

352 (c) financial statements and other information that the director may by rule made in
353 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as being
354 reasonably necessary to determine whether the requirements of this chapter have been met and
355 whether any of the events specified in Subsection **57-19-13**(1)(g) have occurred.

356 (2) ~~[Interests]~~ An interest in a ~~[project which are]~~ development that is encumbered by
357 ~~[liens, mortgages, or other encumbrances]~~ a lien, mortgage, or other encumbrance may not be
358 accepted for registration or offered ~~[for disposition]~~ to the public unless:

359 (a) adequate release or nondisturbance clauses are contained in the encumbering
360 instruments to reasonably assure that the purchaser's interest in the ~~[project]~~ development will
361 not be defeated; or

362 (b) the division ~~[has accepted]~~ accepts other equivalent assurances ~~[which]~~ that, in the
363 division's opinion ~~[of the division]~~, meet the purposes of this Subsection (2).

364 (3) (a) ~~[Each application]~~ A person who applies for a development registration ~~[of a~~
365 ~~project shall be accompanied by: (i)]~~ shall include with the application a filing fee of \$500 for
366 up to 100 interests, plus an additional \$3 per interest for each interest over 100, up to a
367 maximum of \$2,500 for each application~~[- and]~~.

368 ~~[(ii) subject to Subsection (3)(b), a deposit of \$300 to cover all on-site inspection costs~~

369 and expenses incurred by the division.]

370 ~~[(b) (i) If the \$300 deposit is insufficient to meet the estimated costs and expenses of~~
371 ~~the on-site inspection, the applicant shall make an additional deposit sufficient to cover the~~
372 ~~estimated costs and expenses before the division will inspect the subdivided lands.]~~

373 ~~[(ii) The deposit shall be refunded to the extent it is not used, together with an itemized~~
374 ~~statement from the division of all amounts it has used.]~~

375 (b) If the division determines that an on-site inspection of the development is
376 necessary, the development shall pay the division the actual amount of the costs and expenses
377 incurred by the division in performing the on-site inspection.

378 ~~[(4) If a person registers additional interests to be offered for disposition, the person~~
379 ~~may consolidate the subsequent registration with any earlier registration offering interests for~~
380 ~~disposition in the same project]~~

381 (4) A person may add an additional site or interest to an approved development
382 registration by:

383 (a) filing an application for consolidation accompanied by an additional fee of \$200
384 plus \$3 for each additional interest, up to a maximum of \$1,250 for each application[; if at the
385 time the person makes the application all of]; and

386 (b) providing the information required [by] under Subsection (1) [has been brought
387 current and covers the additional interests] for each additional site or interest.

388 Section 6. Section 57-19-6 is amended to read:

389 **57-19-6. Effective date of application.**

390 (1) An application for registration filed pursuant to Section 57-19-5 is effective upon
391 the expiration of 30 business days following its filing with the director, unless:

392 (a) an order denying the application pursuant to Section 57-19-13 is in effect;

393 (b) a prior effective date has been ordered by the director; or

394 (c) the director has, ~~[prior to]~~ before that date, notified the applicant of a defect in the
395 registration application.

396 (2) An applicant ~~[may]~~ shall consent to the delay of effectiveness until the director by
397 order declares the registration to be effective.

398 (3) (a) Notwithstanding Section 57-19-4, the division may grant a developer a
399 temporary permit ~~[allowing the developer to begin a sales and marketing program while the~~

400 ~~registration is in process.]~~ that allows a developer to advertise, offer, or sell an interest:

401 (i) before the developer's application for registration is approved; and

402 (ii) for a period of 30 days or less.

403 (b) To obtain a temporary permit, the developer shall:

404 (i) submit an application to the division for a temporary permit in the form required by
405 the division;

406 (ii) submit a substantially complete application for registration to the division,
407 including all appropriate fees and exhibits required under Section 57-19-5, plus a temporary
408 permit fee of \$100;

409 (iii) provide evidence acceptable to the division that all funds received by the
410 developer or marketing agent will be placed into an independent escrow with instructions that
411 funds will not be released until a final registration has been granted;

412 (iv) give to each purchaser and potential purchaser a copy of the proposed property
413 report that the developer has submitted to the division with the initial application; and

414 (v) give to each purchaser the opportunity to cancel the purchase in accordance with
415 Section 57-19-12.

416 (c) ~~[A]~~ Upon the issuance of an approved registration, a purchaser shall have an
417 additional opportunity to cancel ~~[upon the issuance of an approved]~~ the registration if the
418 division determines that there is a substantial difference in the disclosures contained in the final
419 property report and those given to the purchaser in the proposed property report.

420 (4) (a) Notwithstanding Section 57-19-4, a developer or a person acting on behalf of a
421 developer may market and accept a reservation and deposit from a prospective purchaser before
422 submitting to the division ~~[a]~~ an application for registration or a temporary permit ~~[application~~
423 ~~for a project]~~ if:

424 (i) the deposit is placed in a non-interest bearing escrow account with a licensed real
425 estate broker, a title company, or another escrow that the division approves in advance; and

426 (ii) the deposit is guaranteed to be fully refundable at any time at the request of the
427 prospective purchaser.

428 (b) A deposit that a prospective purchaser tenders under Subsection (4)(a) may not be
429 released to the developer until after:

430 (i) the division approves the ~~[project]~~ development's registration; and

431 (ii) the prospective purchaser executes a written purchase contract creating a binding
432 obligation to purchase.

433 Section 7. Section **57-19-7** is amended to read:

434 **57-19-7. Prior permits.**

435 Any permit to market a [~~project~~] development issued by the division [~~prior to~~] before
436 April 27, 1987, is considered to be an effective registration, but is subject to the renewal
437 provisions of this chapter upon the anniversary date of the issuance of the original permit.

438 Section 8. Section **57-19-8** is amended to read:

439 **57-19-8. Filing proposed documents.**

440 (1) Every developer shall file with the director at least five business days [~~prior to~~]
441 before using any of the following in this state:

442 (a) the proposed form of [~~its~~] the developer's sales contracts; and

443 (b) [~~copies~~] a copy or the text of any supplements to the written disclosure required [~~to~~
444 be furnished to prospective purchasers pursuant to] under Section **57-19-11**.

445 (2) If the text, rather than [~~copies~~] a copy, of the materials [~~specified~~] described in
446 Subsection (1) [~~are~~] is filed, [~~copies~~] the developer shall file the copy, including an electronic
447 version, of [~~these~~] the materials [~~shall be filed~~] with the director within five business days
448 [~~following the date~~] after the day on which the materials are first used.

449 (3) [~~The~~] A developer shall notify the division within five [~~working~~] business days if
450 [~~he~~] the developer is convicted in any court of a crime involving fraud, deception, false
451 pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions,
452 or has been subject to any injunction or administrative order restraining a false or misleading
453 promotional plan involving land dispositions.

454 (4) The developer must notify the division within five [~~working~~] business days if the
455 developer files a petition in bankruptcy or if any other event occurs [~~which~~] that may have a
456 material adverse effect on the [~~subdivision~~] development.

457 (5) (a) If any suit by or against a developer [~~of a camp resort or timeshare~~
458 development] results in a court finding that the developer engaged in fraud, deception, false
459 pretenses, misrepresentation, false advertising, or dishonest dealing in a real estate transaction,
460 the developer shall promptly [~~furnish~~] give the division a copy of the final order, settlement
461 agreement, consent agreement, or other document evidencing resolution of the case at the trial

462 level, whether or not an appeal is anticipated.

463 (b) A developer's failure to comply with Subsection (5)(a) may, in the discretion of the
464 division, constitute grounds for the division withholding any approval [~~required by~~] under this
465 chapter.

466 Section 9. Section **57-19-9** is amended to read:

467 **57-19-9. Duration of registration -- Amendment and renewal -- Supplemental**
468 **disclosure -- Notice of amendment.**

469 (1) Registration of a [~~project~~] development is effective for a period of one year and
470 may, upon application, be renewed for successive periods of one year each.

471 (2) (a) A registration may be amended at any time, for any reason, by filing an
472 amended application for registration[~~, which~~].

473 (b) The amended registration shall become effective in [~~the manner provided in~~]
474 accordance with Section **57-19-6**.

475 [~~(3) The written disclosure required to be furnished to prospective purchasers pursuant~~
476 ~~to Section 57-19-11]~~

477 (3) (a) The developer shall [~~be supplemented~~] supplement the property report as often
478 as is necessary to keep the required information reasonably current. [~~These~~]

479 (b) The supplements described in Subsection (3)(a) shall be filed with the director [~~as~~
480 ~~provided~~] in accordance with Section **57-19-8**.

481 (4) [~~Every~~] (a) A developer shall provide timely notice [~~sent~~] to the director of any
482 event [~~which has occurred which~~] that occurs that may have a material adverse effect on the
483 conduct of the operation of the [~~project~~] development.

484 (b) In addition to [~~this~~] the notification described in Subsection (4)(a), the developer
485 shall, within 30 days [~~of the occurrence of that~~] after the day on which an event described in
486 Subsection (4)(a) occurs, file an amendment to the registration disclosing the information
487 previously provided.

488 (5) Each application for renewal of a registration and each supplementary filing [~~as~~
489 ~~provided~~] described in this section shall be accompanied by a fee of \$200.

490 Section 10. Section **57-19-10** is amended to read:

491 **57-19-10. Effect of application or registration -- Misleading statements to**
492 **prospective purchasers a misdemeanor.**

493 (1) Neither the fact that an application for registration or the written disclosures
 494 required by this chapter have been filed, nor the fact that a [project] development has been
 495 effectively registered or exempted, constitutes a finding by the director that the offering or any
 496 document filed under this chapter is true, complete, and not misleading, nor does either of these
 497 facts mean that the director has determined in any way the merits or qualifications of, or
 498 recommended or given approval to, any person, developer, or transaction involving an interest
 499 in a [project] development.

500 (2) It is a class A misdemeanor to make or cause to be made to any purchaser or
 501 prospective purchaser any offering or document filed under this chapter which is untrue,
 502 incomplete, or misleading.

503 Section 11. Section **57-19-11** is amended to read:

504 **57-19-11. Disclosure required.**

505 (1) Except [~~in a transaction exempt under~~] as provided in Section **57-19-26**, any person
 506 who sells or offers to sell an interest in a [project] development located in this state, or who
 507 sells or offers to sell in this state an interest in a [project] development located outside of this
 508 state, shall provide to [~~the~~] a prospective purchaser, before the prospective purchaser signs an
 509 agreement to purchase an interest in [~~a project~~] the development or gives any item of value for
 510 the purchase of an interest in [~~a project~~] the development, a written statement [~~which~~] that
 511 provides a full and fair disclosure of information regarding the [project] development and the
 512 purchaser's rights and obligations associated with the purchase of an interest in [~~a project~~] the
 513 development.

514 (2) The written disclosure described in Subsection (1):

515 (a) may include electronic files; and

516 (b) shall:

517 (i) be on the property report form required by the division; and [~~shall~~]

518 (ii) include:

519 [~~(1)~~] (A) the name and address of the developer;

520 [~~(2)~~] (B) a statement regarding whether [~~or not~~] the developer has ever been[~~-(a)~~]

521 convicted of a felony[;] or any misdemeanor involving theft, fraud, or dishonesty[;]₂ or [~~(b)~~]

522 enjoined from, assessed any civil penalty for, or found to have engaged in the violation of any

523 law designed to protect consumers;

524 ~~[(3)]~~ (C) a brief description of the developer's experience in timeshare, camp resort, or
525 any other real estate development;

526 ~~[(4)]~~ (D) a brief description of the interest ~~[which]~~ that is being offered in the ~~[project]~~
527 development;

528 ~~[(5)]~~ (E) a description of any provisions to protect the purchaser's interest from loss
529 due to foreclosure on any underlying financial obligation of the ~~[project]~~ development;

530 ~~[(6)]~~ (F) a statement ~~[of the maximum number of interests in the project to be~~
531 ~~marketed, and a commitment that this maximum number will not be exceeded unless disclosed~~
532 ~~by filing an amendment to the registration as provided in Section 57-19-9 prior to the~~
533 ~~amendment becoming effective]~~ that the development will not issue more interests during a 12
534 month period than the development can accommodate during the 12 month period;

535 ~~[(7)]~~ (G) any event ~~[which]~~ that has occurred ~~[as of]~~ since the date of the offer ~~[which]~~
536 that may have a material adverse effect on the operation of the ~~[project]~~ development; and

537 ~~[(8)]~~ (H) any other information the director considers necessary for the protection of
538 purchasers.

539 Section 12. Section **57-19-12** is amended to read:

540 **57-19-12. Purchaser's right to cancel.**

541 (1) (a) An agreement to purchase an interest in a ~~[project]~~ development may be
542 cancelled, at the option of the purchaser, if:

543 (i) the purchaser ~~[provides]~~ delivers a written notice of cancellation to the developer~~[-]~~
544 at the developer's business address by:

545 (A) hand ~~[delivery]~~; or

546 (B) certified mail, ~~[written notice of the cancellation]~~ return receipt requested, or a
547 delivery service that provides proof of delivery; and

548 (ii) the notice is delivered or postmarked not later than midnight of the fifth business
549 day ~~[following]~~ after the day on which the agreement is signed.

550 (b) In computing the number of business days for purposes of this section, the day on
551 which the agreement was signed is not included.

552 (c) Within 30 days after ~~[receipt of]~~ the day on which the developer receives a timely
553 notice of cancellation, the developer shall refund any money or other consideration paid by the
554 purchaser.

555 (2) Every agreement to purchase an interest in a [~~project which~~] development that is
 556 subject to this chapter shall include the following statement in at least 10-point bold upper-case
 557 type, immediately preceding the space for the purchaser's signature:

558 "PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT
 559 WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING
 560 OR SENDING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR A
 561 DELIVERY SERVICE THAT PROVIDES PROOF OF DELIVERY, WRITTEN NOTICE OF
 562 CANCELLATION TO: (NAME AND ADDRESS OF DEVELOPER). THE NOTICE MUST
 563 BE DELIVERED OR POSTMARKED BY MIDNIGHT OF THE FIFTH BUSINESS DAY
 564 FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED. IN COMPUTING
 565 THE NUMBER OF BUSINESS DAYS, THE DAY ON WHICH THE CONTRACT IS
 566 SIGNED IS NOT INCLUDED."

567 Section 13. Section **57-19-13** is amended to read:

568 **57-19-13. Suspension, revocation, or denial of registration -- Fine.**

569 (1) Subject to Section **57-19-17**, [~~an application for registration of a project may be~~
 570 ~~denied, an existing registration may be suspended or revoked, or a fine of not more than \$500~~
 571 ~~may be imposed by the director, if the director finds that:] if the director finds that an applicant
 572 or developer has engaged in an act described in Subsection (2), the director may:~~

573 (a) deny an application for registration of a development;

574 (b) suspend or revoke an existing registration; or

575 (c) except as provided in Subsection (3), impose a fine of not more than \$500.

576 (2) Subsection (1) applies if the director finds that:

577 (a) the developer's advertising or sales techniques or trade practices have been or are
 578 deceptive, false, or misleading;

579 (b) the developer [~~has failed~~] fails to file [~~copies~~] a copy of [~~its~~] the developer's sales
 580 contract forms as required [~~by~~] under Section **57-19-8**;

581 (c) the developer [~~has failed~~] fails to comply with any provision of this chapter or [~~the~~
 582 ~~rules~~] any rule adopted under this chapter that materially [~~affect~~] affects or would affect the
 583 rights of [~~purchasers or prospective purchasers~~] a purchaser or prospective purchaser of an
 584 interest in a [~~project~~] development, or that materially [~~affect~~] affects the administration of this
 585 chapter;

586 (d) the ~~[developer's offering]~~ developer makes a fraudulent offer of an interest in a
587 ~~[project has worked or would work a fraud upon purchasers or prospective purchasers of such~~
588 ~~an]~~ development to a purchaser or prospective purchaser of the interest;

589 (e) the developer's application or any amendment to an application is incomplete in any
590 material respect;

591 (f) the developer's application or any amendment to an application contains material
592 misrepresentations or omissions of material fact ~~[which]~~ that are necessary to make the
593 statements contained in the application or amendment not misleading;

594 (g) the developer or any officer or director of the developer has been:

595 (i) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty;

596 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in ~~[the]~~ a
597 violation of any law designed to protect consumers; or

598 (iii) engaged in dishonest practices in any industry involving sales to consumers;

599 (h) the developer has represented or is representing to purchasers in connection with
600 the offer or sale of an interest in a ~~[project]~~ development that any accommodations, related
601 facilities, or amenities are planned, without reasonable grounds to believe that they will be
602 completed within a reasonable time;

603 (i) the developer ~~[has disposed of, concealed, or diverted]~~ disposes, conceals, or diverts
604 any funds or assets so as to defeat the rights of purchasers;

605 (j) the developer ~~[has failed]~~ fails to provide to ~~[purchasers copies]~~ a purchaser a copy
606 of the written disclosure required by Section 57-19-11; or

607 (k) the developer, the developer's successor in interest, or a managing association
608 discloses a purchaser's name, address, or email address to an unaffiliated entity without first
609 obtaining written consent from the purchaser, unless the disclosure is in response to a subpoena
610 or an order of a court or administrative tribunal.

611 ~~[(2)]~~ (3) The authority to impose ~~[fines as provided in]~~ a fine under this section does
612 not apply to Subsection ~~[(1)]~~ (2)(e).

613 ~~[(3)]~~ (4) Notwithstanding Subsection ~~[(1)]~~ (2)(k), a developer shall, upon request by
614 the division, provide the division a list of ~~[all purchasers' names, addresses, and email~~
615 ~~addresses]~~ each purchaser's name, address, and email address.

616 Section 14. Section 57-19-14 is amended to read:

617 **57-19-14. Registration of salesperson.**

618 ~~[(1) Unless the transaction is exempt under]~~ Except as provided in Section 57-19-26, it
 619 is unlawful for [any] a person to act as a salesperson [marketing] and market a [project]
 620 development in this state without first registering under this chapter as a salesperson.

621 ~~[(2) The fee for registration as a salesperson is waived by the division for persons~~
 622 ~~licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.]~~

623 Section 15. Section **57-19-15** is amended to read:

624 **57-19-15. Application for registration of salesperson.**

625 (1) A person may apply for registration as a salesperson under this chapter by filing
 626 with the director an application in the form prescribed by the director, including:

627 (a) a statement ~~[of]~~ regarding whether ~~[or not]~~ the applicant has ever been:

628 (i) convicted of:

629 (A) a felony; or

630 (B) a misdemeanor involving theft, fraud, or dishonesty; or

631 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in the
 632 violation of a law designed to protect a consumer;

633 (b) (i) a statement describing the applicant's employment history for the five years
 634 immediately preceding the day on which the application is filed; and

635 (ii) a statement ~~[of]~~ regarding whether ~~[or not]~~ a termination of employment during the
 636 period described in Subsection (1)(b)(i) is ~~[as]~~ a result of theft, fraud, or an act of dishonesty;

637 ~~[and]~~

638 (c) evidence of the applicant's honesty, integrity, truthfulness, and reputation; and

639 ~~[(e)]~~ (d) any other information that the director, by rule made in accordance with Title

640 63G, Chapter 3, Utah Administrative Rulemaking Act, considers necessary to protect [the

641 interests of a purchaser] a purchaser's interests.

642 (2) (a) Notwithstanding the requirements for a regulatory fee under Section **63J-1-504**,
 643 at the time an applicant files an application, the applicant shall pay to the division a fee of
 644 \$100.

645 (b) The fee for registration described in Subsection (2)(a) is waived for a person
 646 licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.

647 (3) (a) Registration as a salesperson is effective for ~~[a period for]~~ two years after the

648 day on which the registration is approved by the director, unless the director specifies
649 otherwise.

650 (b) To renew a registration, a salesperson shall:

651 (i) file a form prescribed by the director for that purpose; and

652 (ii) pay a renewal fee of \$100.

653 Section 16. Section **57-19-16** is amended to read:

654 **57-19-16. Denial, revocation, or suspension of registration of salesperson -- Fine.**

655 (1) Subject to Section **57-19-17**, if the [director] division finds that an applicant or
656 salesperson has engaged in an act described in Subsection (2), the [director] division may:

657 (a) deny an application for registration as a salesperson;

658 (b) suspend or revoke an existing registration; or

659 (c) impose a civil penalty not to exceed \$500.

660 (2) Subsection (1) applies if the [director] division finds that the applicant or
661 salesperson:

662 (a) files, or causes to be filed, with the [director] division a document that contains [an]
663 untrue or misleading information;

664 (b) makes an untrue or misleading statement of material fact;

665 (c) fails to state a material fact that is necessary in order to make the statements made
666 not misleading in light of the circumstances under which the statements are made;

667 (d) employs a device, scheme, or artifice to defraud, or engages in an act, practice, or
668 course of business that operates or would operate as a fraud or deceit upon a person;

669 (e) subsequent to the effective date of registration as a salesperson, is:

670 (i) convicted of:

671 (A) a felony; or

672 (B) a misdemeanor involving theft, fraud, or dishonesty; or

673 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in a violation
674 of any law designed to protect consumers;

675 (f) violates this chapter;

676 (g) engages in an activity that constitutes dishonest dealing; or

677 (h) engages in unprofessional conduct as defined by statute or rule made by the
678 director.

679 Section 17. Section 57-19-21 is amended to read:

680 **57-19-21. Voidable agreements.**

681 (1) Any agreement to purchase an interest in a [~~project entered into in violation of~~
682 development that violates Section 57-19-4 or 57-19-14 may, at the option of the purchaser, be
683 voided and the purchaser's entire consideration recovered together with interest at the legal rate,
684 costs, and reasonable [~~attorney's~~] attorney fees. [~~However, no~~]

685 (2) No suit under this section may be brought more than two years after:

686 [(+)] (a) the [~~date~~] day on which the agreement is signed; or

687 [(2)] (b) the [~~date~~] day on which the purchaser knew or reasonably should have known
688 of the violation.

689 Section 18. Section 57-19-26 is amended to read:

690 **57-19-26. Exemptions.**

691 (1) Unless entered into for the purpose of evading the provisions of this chapter, the
692 following transactions are exempt from registration:

693 (a) an isolated [~~transactions~~] transaction by an owner of an interest in a [~~project~~]
694 development or by a person holding [~~such an~~] the owner's executed power of attorney;

695 (b) an offer or sale by a governmental entity; and

696 (c) [~~the~~] a resale of an interest that is:

697 (i) acquired:

698 (A) by the developer who initially registered the [~~project~~] development or by the
699 managing association of the [~~project~~] development; and

700 (B) through a foreclosure, quitclaim deed, deed in lieu of foreclosure, or equivalent
701 [~~transfer~~] means;

702 (ii) not offered as part of a [~~project~~] development that includes one or more interests
703 that are unregistered or have been registered by a different developer or as part of a different
704 [~~project~~] development; and

705 (iii) closed after the developer or managing association provides a purchaser the
706 disclosures required by Section 57-19-11 and the right to rescind required by Section 57-19-12.

707 (2) After a resale by a developer or managing association that is claimed to be exempt
708 under Subsection (1)(c), the division retains jurisdiction to:

709 (a) investigate a complaint regarding the resale; and

710 (b) if applicable, take an administrative action against the developer or managing
711 association on the basis of unprofessional conduct, ~~[as provided]~~ described in Section
712 [57-19-13](#).

713 (3) (a) The director may, by rule made in accordance with Title 63G, Chapter 3, Utah
714 Administrative Rulemaking Act, or by order, exempt any person from any ~~[or all requirements]~~
715 requirement of this chapter if the director finds that the offering of an interest in a ~~[project]~~
716 development is essentially noncommercial.

717 (b) The offering of ~~[one or more interests]~~ an interest in a ~~[project]~~ development that
718 has ~~[a maximum of]~~ 10 or fewer interests is considered essentially noncommercial.

719 (c) A person who does not meet the requirements described in Subsection (3)(b), but
720 believes that a proposed offering of more than 10 interests in a development is essentially
721 noncommercial, may request an order of exemption from the director.

722 (d) To request an order of exemption under this section, a person shall submit to the
723 director a request for agency action in accordance with Section [63G-4-201](#).

Legislative Review Note
as of 2-25-15 10:33 AM

Office of Legislative Research and General Counsel