

28 AMENDS:

29 61-1-13, as last amended by Laws of Utah 2011, Chapters 317, 319, and 354

30 61-2-201, as last amended by Laws of Utah 2011, Chapter 289

31 61-2f-102, as last amended by Laws of Utah 2012, Chapter 166

32 61-2f-103, as last amended by Laws of Utah 2014, Chapter 350

33 ENACTS:

34 57-29-101, Utah Code Annotated 1953

35 57-29-102, Utah Code Annotated 1953

35a **Ĥ→ 57-29-103, Utah Code Annotated 1953 ←Ĥ**

36 57-29-201, Utah Code Annotated 1953

37 57-29-202, Utah Code Annotated 1953

38 57-29-203, Utah Code Annotated 1953

39 57-29-301, Utah Code Annotated 1953

40 57-29-302, Utah Code Annotated 1953

41 57-29-303, Utah Code Annotated 1953

42 57-29-304, Utah Code Annotated 1953

43 57-29-305, Utah Code Annotated 1953

44 REPEALS:

45 61-2f-307, as renumbered and amended by Laws of Utah 2010, Chapter 379



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

48 Section 1. Section 57-29-101 is enacted to read:

49 **CHAPTER 29. UNDIVIDED FRACTIONALIZED LONG-TERM ESTATE**

50 **SALES PRACTICES ACT**

51 **Part 1. General Provisions**

52 **57-29-101. Title.**

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

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

56 Section 2. Section 57-29-102 is enacted to read:

57 **57-29-102. Definitions.**

58 As used in this chapter:

- 59 (1) "Commission" means the Real Estate Commission created in Section 61-2f-103.
 60 (2) "Director" means the director of the Division of Real Estate.
 61 (3) "Division" means the Division of Real Estate created in Section 61-2-201.
 62 (4) "Management agreement" means an agreement between a person and each owner of
 63 an undivided fractionalized long-term estate in a piece of real property under which the person
 64 agrees to manage the leasing or operations of the real property.
 65 (5) "Master lease" means an agreement under which a person is granted a leasehold
 66 interest in real property and may sublease all or a portion of the real property to one or more
 67 persons.
 68 (6) "Master lease tenant" means the lessee in a master lease.
 69 (7) "Sponsor" means a person who is the ~~H~~→ original ←~~H~~ seller of an undivided
 69a fractionalized
 70 long-term estate.

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

73 (i) a tenancy in common; or

74 (ii) a fee estate.

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

75a **~~H~~→ Section 3. Section 57-29-103 is enacted to read:**

75b **57-29-103. Applicability.**

75c **This chapter does not apply to property that is subject to Title 57, Chapter 19,**
 75d **Timeshare and Camp Resort Act. ←~~H~~**

76 Section ~~H~~→ [3] 4 ←~~H~~ . Section **57-29-201** is enacted to read:

77 **Part 2. License and Disclosure Requirements**

78 **57-29-201. Title.**

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

80 Section ~~H~~→ [4] 5 ←~~H~~ . Section **57-29-202** is enacted to read:

81 **57-29-202. License required.**

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

86 Section ~~H~~→ [5] 6 ←~~H~~ . Section **57-29-203** is enacted to read:

87 **57-29-203. Required disclosures.**

88 (1) A ~~H~~→ [person] sponsor or licensee ←~~H~~ who sells or offers to sell an undivided
 88a fractionalized long-term estate
 89 shall provide each prospective purchaser a written disclosure, related to the real property in

90 which the undivided fractionalized long-term estate is offered, that:

91 (a) if applicable:

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

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

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

97 (c) includes a copy of:

98 (i) a tenants in common agreement; or

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

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

103 (e) includes a copy of any management agreement;

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

106 (g) includes any additional information that an ordinarily prudent purchaser would
107 consider material to deciding whether to purchase the undivided fractionalized long-term
108 estate, as determined by the commission, with concurrence by the division, by rule in
109 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

110 (2) A ~~H~~→ [person] sponsor or licensee ←~~H~~ who sells or offers to sell an undivided
110a fractionalized long-term estate
111 shall provide the written disclosure described in Subsection (1) to the prospective purchaser
112 before the prospective purchaser purchases the undivided fractionalized long-term estate.

113 Section ~~H~~→ [6] 7 ←~~H~~ . Section 57-29-301 is enacted to read:

114 **Part 3. Investigation and Enforcement**

115 **57-29-301. Title.**

116 This part is known as "Investigation and Enforcement."

117 Section ~~H~~→ [7] 8 ←~~H~~ . Section 57-29-302 is enacted to read:

118 **57-29-302. Rulemaking.**

119 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
120 consistent with this chapter, the commission, with concurrence by the division, may make rules

121 governing:

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

123 (2) enforcement of the provisions of this chapter.

124 Section ~~H~~→ [8] 9 ←~~H~~ . Section **57-29-303** is enacted to read:

125 **57-29-303. Investigatory powers and proceedings of division.**

126 (1) The division may:

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

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

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

132 may:

133 (a) administer oaths or affirmations; and

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

135 (i) subpoena a witness;

136 (ii) compel a witness's attendance;

137 (iii) take evidence; or

138 (iv) require the production, within 10 business days, of any information or item that is
139 relevant to the investigation, including:

140 (A) the existence, description, nature, custody, condition, and location of any books,

141 electronic records, documents, or other tangible records;

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

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

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

147 Section ~~H~~→ [9] 10 ←~~H~~ . Section **57-29-304** is enacted to read:

148 **57-29-304. Enforcement.**

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

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

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

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

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

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

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

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

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

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

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

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

173 (4) The remedies and action provided in this section are not exclusive but are in
174 addition to any other remedies or actions available under Section 57-29-305.

175 Section ~~H~~→ [10] 11 ←~~H~~ . Section **57-29-305** is enacted to read:

176 **57-29-305. Voidable agreements.**

177 (1) (a) If a ~~H~~→ [seller] sponsor ←~~H~~ violates a provision of this chapter in entering
177a into an agreement to
178 purchase an undivided fractionalized long-term estate, the purchaser may rescind the
179 agreement.

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

182 (2) A purchaser who rescinds an agreement in accordance with Subsection (1) is

183 entitled to all the consideration that the purchaser gave under the rescinded agreement.

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

186 Section ~~H~~→ [H] 12 ←~~H~~ . Section **61-1-13** is amended to read:

187 **61-1-13. Definitions.**

188 (1) As used in this chapter:

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

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

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

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

198 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

199 (II) exempted by Subsection 61-1-14(2);

200 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the
201 Securities Act of 1933; or

202 (IV) with existing employees, partners, officers, or directors of the issuer; or

203 (B) a broker-dealer in effecting transactions in this state limited to those transactions
204 described in Section 15(h)(2) of the Securities Exchange Act of 1934.

205 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
206 similar status or performing similar functions, is an agent only if the partner, officer, director,
207 or person otherwise comes within the definition of "agent."

208 (iv) "Agent" does not include a person described in Subsection (3).

209 (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions
210 in securities for the account of others or for the person's own account.

211 (ii) "Broker-dealer" does not include:

212 (A) an agent;

213 (B) an issuer;

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

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

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

530 (i) manage the individual's resources; or
 531 (ii) comprehend the nature and consequences of making an investment decision.

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

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

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

539 (3) (a) This Subsection (3) applies to the offer or sale of a real property estate
 540 exempted from the definition of security under Subsection (1)(ee)(ii)(C).

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

545 (i) a principal broker;
 546 (ii) an associate broker; or
 547 (iii) a sales agent.

548 Section ~~H~~→ [12] 13 ←~~H~~ . Section 61-2-201 is amended to read:

549 **61-2-201. Division of Real Estate created -- Director appointed -- Personnel.**

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

552 (a) this chapter;
 553 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
 554 (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;

555 (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
 556 (e) Title 57, Chapter 29, Undivided Fractionalized Long-Term Estate Sales Practices

557 Act;

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

559 [~~(f)~~] (g) Chapter 2e, Appraisal Management Company Registration and Regulation

560 Act;

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

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

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

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

569 Section ~~H~~→ [13] 14 ←~~H~~ . Section 61-2f-102 is amended to read:

570 **61-2f-102. Definitions.**

571 As used in this chapter:

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

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

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

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

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

579 (a) a Saturday;

580 (b) a Sunday; or

581 (c) a federal or state holiday.

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

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

585 (6) "Concurrence" means the entities given a concurring role must jointly agree for

679 management activities associated with these rentals; or

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

682 (20) "Real estate" includes leaseholds and business opportunities involving real
683 property.

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

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

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

690 (23) "Reissuance" means the process by which a licensee may obtain a license
691 following revocation of the license.

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

694 (25) "Sales agent" means an individual who is:

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

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

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

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

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

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

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

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

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

707 Section ~~H~~→ [14] 15 ←~~H~~ . Section 61-2f-103 is amended to read:

708 **61-2f-103. Real Estate Commission.**

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

772 four-year term ending June 30.

773 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
774 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
775 commission members are staggered so that approximately half of the commission is appointed
776 every two years.

777 (c) Upon the expiration of the term of a member of the commission, the member of the
778 commission shall continue to hold office until a successor is appointed and qualified.

779 (d) A commission member may not serve more than two consecutive terms.

780 (e) Members of the commission shall annually select one member to serve as chair.

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

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

785 (a) Section 63A-3-106;

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

787 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
788 63A-3-107.

789 (7) (a) The commission shall meet at least monthly.

790 (b) The director may call additional meetings:

791 (i) at the director's discretion;

792 (ii) upon the request of the chair; or

793 (iii) upon the written request of three or more commission members.

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

796 Section ~~H~~→ [15] 16 ←~~H~~ . Repealer.

797 This bill repeals:

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