

REAL ESTATE TRANSACTION AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: Lincoln Fillmore

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 licensing and disclosure requirements for the sale or offer of an undivided fractionalized long-term estate;
- ▶ addresses the Division of Real Estate's rulemaking, 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; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



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

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 seller of an undivided 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.

76 Section 3. 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 4. 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 5. Section 57-29-203 is enacted to read:

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

88 (1) A person who sells or offers to sell an undivided 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 person who sells or offers to sell an undivided 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 6. 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 7. 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 8. 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 9. 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 10. Section **57-29-305** is enacted to read:

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

177 (1) (a) If a seller violates a provision of this chapter in entering 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 11. 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;

- 214 (C) a depository institution or trust company;
- 215 (D) a person who has no place of business in this state if:
- 216 (I) the person effects transactions in this state exclusively with or through:
- 217 (Aa) the issuers of the securities involved in the transactions;
- 218 (Bb) other broker-dealers;
- 219 (Cc) a depository institution, whether acting for itself or as a trustee;
- 220 (Dd) a trust company, whether acting for itself or as a trustee;
- 221 (Ee) an insurance company, whether acting for itself or as a trustee;
- 222 (Ff) an investment company, as defined in the Investment Company Act of 1940,
- 223 whether acting for itself or as a trustee;
- 224 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
- 225 (Hh) another financial institution or institutional buyer, whether acting for itself or as a
- 226 trustee; or
- 227 (II) during any period of 12 consecutive months the person does not direct more than
- 228 15 offers to sell or buy into this state in any manner to persons other than those specified in
- 229 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
- 230 (E) a general partner who organizes and effects transactions in securities of three or
- 231 fewer limited partnerships, of which the person is the general partner, in any period of 12
- 232 consecutive months;
- 233 (F) a person whose participation in transactions in securities is confined to those
- 234 transactions made by or through a broker-dealer licensed in this state;
- 235 (G) a person who is a principal broker or associate broker licensed in this state and
- 236 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel
- 237 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire
- 238 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
- 239 indebtedness secured thereby, is offered and sold as a unit;
- 240 (H) a person effecting transactions in commodity contracts or commodity options;
- 241 (I) a person described in Subsection (3); or
- 242 (J) other persons as the division, by rule or order, may designate, consistent with the
- 243 public interest and protection of investors, as not within the intent of this Subsection (1)(c).
- 244 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or

245 acquisition of a security or interest in a security for value.

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

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

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

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

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

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

256 (v) a foreign currency; and

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

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

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

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

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

276 commodities.

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

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

283 (A) with the Securities and Exchange Commission; or

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

286 (i) "Depository institution" [~~is as~~] means the same as that term is defined in Section
287 7-1-103.

288 (j) "Director" means the director of the division appointed in accordance with Section
289 61-1-18.

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

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

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

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

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

296 (n) "Federal covered security" means a security that is a covered security under Section
297 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of
298 the Securities Act of 1933.

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

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

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

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

306 (B) for compensation and as a part of a regular business, issues or promulgates

307 analyses or reports concerning securities.

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

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

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

314 (iii) "Investment adviser" does not include:

315 (A) an investment adviser representative;

316 (B) a depository institution or trust company;

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

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

322 (E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or
323 business or financial publication or service, of general, regular, and paid circulation, whether
324 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
325 the rendering of advice on the basis of the specific investment situation of each client;

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

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

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

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

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

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

337 (B) does any of the following:

- 338 (I) makes a recommendation or otherwise renders advice regarding securities;
- 339 (II) manages accounts or portfolios of clients;
- 340 (III) determines which recommendation or advice regarding securities should be given;
- 341 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;
- 342 or
- 343 (V) supervises employees who perform any of the acts described in this Subsection
- 344 (1)(r)(i)(B).
- 345 (ii) "Investment adviser representative" does not include a person described in
- 346 Subsection (3).
- 347 (s) "Investment contract" includes:
- 348 (i) an investment in a common enterprise with the expectation of profit to be derived
- 349 through the essential managerial efforts of someone other than the investor; or
- 350 (ii) an investment by which:
- 351 (A) an offeree furnishes initial value to an offerer;
- 352 (B) a portion of the initial value is subjected to the risks of the enterprise;
- 353 (C) the furnishing of the initial value is induced by the offerer's promises or
- 354 representations that give rise to a reasonable understanding that a valuable benefit of some kind
- 355 over and above the initial value will accrue to the offeree as a result of the operation of the
- 356 enterprise; and
- 357 (D) the offeree does not receive the right to exercise practical and actual control over
- 358 the managerial decisions of the enterprise.
- 359 (t) "Isolated transaction" means not more than a total of two transactions that occur
- 360 anywhere during six consecutive months.
- 361 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has
- 362 outstanding a security that it has issued.
- 363 (ii) With respect to a preorganization certificate or subscription, "issuer" means the one
- 364 or more promoters of the person to be organized.
- 365 (iii) "Issuer" means the one or more persons performing the acts and assuming duties
- 366 of a depositor or manager under the provisions of the trust or other agreement or instrument
- 367 under which the security is issued with respect to:
- 368 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and

369 certificates of deposit for securities; or

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

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

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

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

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

382 (A) a policy; or

383 (B) the death benefit under a policy.

384 (ii) "Life settlement interest" does not include the initial purchase from the owner by a
385 life settlement provider.

386 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

387 (x) "Person" means:

388 (i) an individual;

389 (ii) a corporation;

390 (iii) a partnership;

391 (iv) a limited liability company;

392 (v) an association;

393 (vi) a joint-stock company;

394 (vii) a joint venture;

395 (viii) a trust where the interests of the beneficiaries are evidenced by a security;

396 (ix) an unincorporated organization;

397 (x) a government; or

398 (xi) a political subdivision of a government.

399 (y) "Precious metal" means the following, whether in coin, bullion, or other form:

400 (i) silver;
401 (ii) gold;
402 (iii) platinum;
403 (iv) palladium;
404 (v) copper; and
405 (vi) such other substances as the division may specify by rule.
406 (z) "Promoter" means a person who, acting alone or in concert with one or more
407 persons, takes initiative in founding or organizing the business or enterprise of a person.
408 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
409 is:
410 (A) inscribed in a tangible medium; or
411 (B) (I) stored in an electronic or other medium; and
412 (II) retrievable in perceivable form.
413 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
414 including when "record" is used in the following phrases:
415 (A) "of record";
416 (B) "official record"; or
417 (C) "public record."
418 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
419 a security or interest in a security for value.
420 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of
421 an offer to buy, a security or interest in a security for value.
422 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):
423 (A) a security given or delivered with or as a bonus on account of a purchase of a
424 security or any other thing, is part of the subject of the purchase, and is offered and sold for
425 value;
426 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
427 on the stock;
428 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
429 or subscribe to another security of the same or another issuer is an offer or sale of that security,
430 and also an offer of the other security, whether the right to convert or acquire is exercisable

431 immediately or in the future;

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

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

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

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

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

445 (A) a good faith gift;

446 (B) a transfer by death;

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

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

449 (E) a securities split or reverse split.

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

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

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

456 (A) note;

457 (B) stock;

458 (C) treasury stock;

459 (D) bond;

460 (E) debenture;

461 (F) evidence of indebtedness;

- 462 (G) certificate of interest or participation in a profit-sharing agreement;
- 463 (H) collateral-trust certificate;
- 464 (I) preorganization certificate or subscription;
- 465 (J) transferable share;
- 466 (K) investment contract;
- 467 (L) burial certificate or burial contract;
- 468 (M) voting-trust certificate;
- 469 (N) certificate of deposit for a security;
- 470 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 471 payments out of production under such a title or lease;
- 472 (P) commodity contract or commodity option;
- 473 (Q) interest in a limited liability company;
- 474 (R) life settlement interest; or
- 475 (S) in general, an interest or instrument commonly known as a "security," or a
- 476 certificate of interest or participation in, temporary or interim certificate for, receipt for,
- 477 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
- 478 (1)(ee)(i)(A) through (R).
- 479 (ii) "Security" does not include:
- 480 (A) an insurance or endowment policy or annuity contract under which an insurance
- 481 company promises to pay money in a lump sum or periodically for life or some other specified
- 482 period;
- 483 (B) an interest in a limited liability company in which the limited liability company is
- 484 formed as part of an estate plan where all of the members are related by blood or marriage, or
- 485 the person claiming this exception can prove that all of the members are actively engaged in the
- 486 management of the limited liability company; or
- 487 (C) (I) a whole long-term estate in real property;
- 488 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
- 489 fewer owners; or
- 490 (III) an undivided fractionalized long-term estate in real property that consists of more
- 491 than 10 owners if, when the real property estate is subject to a management agreement:
- 492 (Aa) the management agreement permits a simple majority of owners of the real

493 property estate to not renew or to terminate the management agreement at the earlier of the end
494 of the management agreement's current term, or 180 days after the day on which the owners
495 give notice of termination to the manager; and

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

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

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

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

507 (gg) (i) "Undivided fractionalized long-term estate" means ~~[an ownership interest in
508 real property by two or more persons that is:]~~ the same as that term is defined in Section
509 57-29-102.

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

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

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

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

515 (i) that is unrelated to a relationship created:

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

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

518 (ii) that results in:

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

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

523 (iii) to:

- 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 12. 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 13. 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

586 action to be taken.

587 ~~[(8)]~~ (7) "Condominium homeowners' association" means the condominium unit
588 owners acting as a group in accordance with declarations and bylaws.

589 ~~[(9)]~~ (8) (a) "Condominium hotel" means one or more condominium units that are
590 operated as a hotel.

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

593 ~~[(7)]~~ (9) "Condominium unit" ~~[is as]~~ means the same as that term is defined in Section
594 57-8-3.

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

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

597 (12) "Entity" means:

598 (a) a corporation;

599 (b) a partnership;

600 (c) a limited liability company;

601 (d) a company;

602 (e) an association;

603 (f) a joint venture;

604 (g) a business trust;

605 (h) a trust; or

606 (i) any organization similar to an entity described in Subsections (12)(a) through (h).

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

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

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

611 (i) the person represents will assist a borrower in preventing a foreclosure; and

612 (ii) relates to a transaction involving the transfer of title to residential real property; or

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

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

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

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

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

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

622 (A) an increase or decrease in an interest rate;

623 (B) a change to the type of interest rate;

624 (C) an increase or decrease in the principal amount of the residential mortgage loan;

625 (D) a change in the number of required period payments;

626 (E) an addition of collateral;

627 (F) a change to, or addition of, a prepayment penalty;

628 (G) an addition of a cosigner; or

629 (H) a change in persons obligated under the existing residential mortgage loan; or

630 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

631 or

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

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

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

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

638 (17) "Person" means an individual or entity.

639 (18) "Principal broker" means an individual who is licensed as a principal broker under
640 this chapter and who:

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

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

647 (iii) advertises, offers, attempts, or otherwise holds the individual out to be engaged in

648 the business described in Subsection (18)(a)(i) or (ii);

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

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

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

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

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

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

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

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

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

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

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

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

675 (i) hotel or motel management;

676 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
677 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
678 similar public accommodations for a period of less than 30 consecutive days, and the

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 14. 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

710 shall:

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

714 (i) licensing of:

715 (A) a principal broker;

716 (B) an associate broker; and

717 (C) a sales agent;

718 (ii) registration of:

719 (A) an entity; and

720 (B) a branch office;

721 (iii) prelicensing and postlicensing education curricula;

722 (iv) examination procedures;

723 (v) the certification and conduct of:

724 (A) a real estate school;

725 (B) a course provider; or

726 (C) an instructor;

727 (vi) proper handling of money received by a licensee under this chapter;

728 (vii) brokerage office procedures and recordkeeping requirements;

729 (viii) property management;

730 (ix) standards of conduct for a licensee under this chapter; and

731 [~~x~~] a rule made under Section ~~61-2f-307~~ regarding an undivided fractionalized

732 long-term estate; and]

733 [~~(xi)~~] (x) if the commission determines necessary, a rule as provided in Subsection

734 ~~61-2f-306~~(3) regarding a legal form;

735 (b) establish, with the concurrence of the division, a fee provided for in this chapter,
736 except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;

737 (c) conduct an administrative hearing not delegated by the commission to an

738 administrative law judge or the division relating to the:

739 (i) licensing of an applicant;

740 (ii) conduct of a licensee;

741 (iii) the certification or conduct of a real estate school, course provider, or instructor
742 regulated under this chapter; or

743 (iv) violation of this chapter by any person;

744 (d) with the concurrence of the director, impose a sanction as provided in Section
745 [61-2f-404](#);

746 (e) advise the director on the administration and enforcement of a matter affecting the
747 division and the real estate sales and property management industries;

748 (f) advise the director on matters affecting the division budget;

749 (g) advise and assist the director in conducting real estate seminars; and

750 (h) perform other duties as provided by this chapter.

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

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

756 (i) under Title 31A, Insurance Code, or Title 7, Financial Institutions Act; or

757 (ii) by the Department of Commerce or any division or other rulemaking body within
758 the Department of Commerce.

759 (3) (a) The commission shall be comprised of five members appointed by the governor
760 and approved by the Senate.

761 (b) Four of the commission members shall:

762 (i) have at least five years' experience in the real estate business; and

763 (ii) hold an active principal broker, associate broker, or sales agent license.

764 (c) One commission member shall be a member of the general public.

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

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

770 (4) (a) Except as required by Subsection (4)(b), as terms of current commission
771 members expire, the governor shall appoint each new member or reappointed member to a

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 15. **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.**