

# HB0211S01 compared with HB0211

~~deleted text~~ shows text that was in HB0211 but was deleted in HB0211S01.

inserted text shows text that was not in HB0211 but was inserted into HB0211S01.

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Representative Calvin R. Musselman proposes the following substitute bill:

## REAL ESTATE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Calvin R. Musselman**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill addresses provisions related to real estate transactions.

#### Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ provides that certain residential property service agreements are void;
- ▶ prohibits recording of a void residential property service agreement or related documents;
- ▶ allows a person to recover damages caused by the recording of a void residential property service agreement;
- ▶ requires an appraisal management company to file ~~a form~~ certain forms with the Division of Real Estate (division);

## HB0211S01 compared with HB0211

- ▶ allows the division to suspend or revoke an appraisal management company's registration under certain circumstances;
- ▶ allows the division to take disciplinary action against a person licensed or required to be licensed by the division who enters into or records a void residential property service agreement;
- ▶ addresses real estate broker and sales agent commissions; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**61-2e-102**, as last amended by Laws of Utah 2021, Chapter 259

**61-2e-205**, as last amended by Laws of Utah 2021, Chapter 259

**61-2f-305**, as enacted by Laws of Utah 2010, Chapter 379

**61-2f-401**, as last amended by Laws of Utah 2022, Chapter 204

ENACTS:

**57-30-101**, Utah Code Annotated 1953

**57-30-201**, Utah Code Annotated 1953

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

Section 1. Section **57-30-101** is enacted to read:

### **CHAPTER 30. RESIDENTIAL PROPERTY SERVICE AGREEMENTS**

#### **Part 1. General Provisions**

#### **57-30-101. Definitions.**

As used in this chapter:

(1) "Common interest community" means the same as that term is defined in Section 57-25-102.

(2) "Home warranty service contract" means the same as that term is defined in Section 31A-6a-101.

## HB0211S01 compared with HB0211

(3) "Record" means to submit a document to a county recorder for official placement in a public land record.

(4) (a) "Residential property service agreement" means, except as provided in Subsection (4)(b), a contract under which a person agrees to provide services in connection with:

(i) the purchase or sale of residential real estate; or

(ii) the maintenance of residential real estate in preparation for purchase or sale.

(b) "Residential property service agreement" does not include:

(i) a home warranty service agreement;

(ii) an insurance contract;

(iii) an option to purchase or right of refusal; or

(iv) a maintenance or repair agreement between an owner of real property within a common interest community and a homeowners' association or other similar organization.

(5) "Residential real estate" means real property located in the state that is:

(a) used primarily for a personal, family, or household purpose; and

(b) contains fewer than five dwelling units.

Section 2. Section **57-30-201** is enacted to read:

### **Part 2. Residential Property Service Agreements**

#### **57-30-201. Prohibited residential property service agreements -- Recording --**

**Damages -- Actual or constructive notice.**

(1) (a) A residential property service agreement may not:

(i) allow the services to be provided under the agreement to begin more than one year after the day on which the residential property service agreement is signed by all parties;

(ii) indicate that the residential property service agreement:

(A) runs with the land;

(B) is binding on a future owner of an interest in the residential real estate that is the subject of the residential property service agreement; or

(C) creates a lien, encumbrance, or other real property security interest; or

(iii) allow for the assignment of the right to provide the services without notice to and agreement by the owner of the residential real estate that is the subject of the residential property service agreement.

## HB0211S01 compared with HB0211

(b) A residential property service agreement that violates Subsection (1)(a) is void.

(2) (a) A person may not record or cause to be recorded:

(i) a void residential property service agreement; or

(ii) a notice or memorandum concerning a void residential property service agreement.

(b) A county recorder may refuse to accept a document described in Subsection (2)(a) for recording.

(c) If a document is recorded in violation of this Subsection (2), a party with an interest in the residential real estate that is the subject of the void residential property service agreement may file a petition with a court of competent jurisdiction to recover actual damages from the person who violated this Subsection (2).

(d) A document recorded in violation of this Subsection (2):

(i) does not provide actual or constructive notice to a bona fide purchaser or creditor;  
and

(ii) may be a violation of Title 38, Chapter 9, Wrongful Lien Act.

Section 3. Section **61-2e-102** is amended to read:

### **61-2e-102. Definitions.**

As used in this chapter:

(1) "Applicable appraisal standards" means:

(a) the Uniform Standards for Professional Appraisal Practice:

(i) published by the Appraisal Foundation; and

(ii) as adopted under Section 61-2g-403;

(b) Chapter 2g, Real Estate Appraiser Licensing and Certification Act; and

(c) rules made by the board under Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

(2) "Appraisal" means the same as that term is defined in Section 61-2g-102.

(3) "Appraisal foundation" means the same as that term is defined in Section 61-2g-102.

(4) "Appraisal management company" or "AMC" means a third party authorized by one of the following persons to broker an appraisal of a dwelling that is collateral for a residential mortgage loan:

(a) a creditor; or

## HB0211S01 compared with HB0211

(b) an underwriter of, or other principal in, a secondary mortgage market.

(5) "Appraisal management service" means:

(a) recruiting, selecting, or retaining an appraiser;

(b) contracting with an appraiser to perform a real estate appraisal activity for a client;

(c) managing the appraisal process, including one or more of the following

administrative services:

(i) receiving an appraisal order or an appraisal report;

(ii) submitting a completed appraisal report to a client;

(iii) collecting a fee from a client for a service provided; or

(iv) paying an appraiser for a real estate appraisal activity; or

(d) reviewing or verifying the work of an appraiser.

(6) "Appraisal report" means the same as that term is defined in Section 61-2g-102.

(7) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal

Financial Institutions Examination Council.

(8) "Appraiser" means an individual who engages in a real estate appraisal activity.

(9) (a) "Appraiser panel" means a network, list, or roster of appraisers who are:

(i) licensed or certified in a state, territory, or the District of Columbia; and

(ii) approved by an appraisal management company to perform appraisals as

independent contractors for the appraisal management company.

(b) "Appraiser panel" includes an appraiser whom the appraisal management company

has:

(i) accepted for consideration for a future appraisal assignment:

(A) in a residential mortgage loan transaction; or

(B) for a secondary mortgage market participant in connection with a residential

mortgage loan transaction; or

(ii) engaged to perform an appraisal:

(A) in a residential mortgage loan transaction; or

(B) for a secondary mortgage market participant in connection with a residential

mortgage loan transaction.

(10) "Board" means the Real Estate Appraiser Licensing and Certification Board that is created in Section 61-2g-204.

## HB0211S01 compared with HB0211

(11) "Client" means a person that enters into an agreement with an appraisal management company for the performance of a real estate appraisal activity.

(12) "Concurrence" means that the entities that are given a concurring role must jointly agree before an action may be taken.

(13) "Controlling person" means:

(a) an owner, officer, or director of an entity seeking to offer appraisal management services;

(b) an individual employed, appointed, or authorized by an appraisal management company who has the authority to:

(i) enter into a contractual relationship with a client for the performance of an appraisal management service; and

(ii) enter into an agreement with an appraiser for the performance of a real estate appraisal activity; or

(c) a person who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(14) "Creditor" means:

(a) a person who regularly extends credit that, under a written agreement, is subject to a finance charge or is payable in more than four installments, not including any down payment; and

(b) a person to whom the obligation described in Subsection (14)(a) is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(15) "Director" means the director of the division.

(16) "Division" means the Division of Real Estate, created in Section 61-2-201, of the Department of Commerce.

(17) "Dwelling" means a residential structure that contains up to four units, regardless of whether the structure is attached to real property, including:

(a) an individual condominium unit;

(b) a cooperative unit;

(c) a mobile home; or

(d) a trailer, if the trailer is used as a residence.

(18) "Entity" means:

## HB0211S01 compared with HB0211

- (a) a corporation;
- (b) a partnership;
- (c) a sole proprietorship;
- (d) a limited liability company;
- (e) another business entity; or
- (f) a subsidiary or unit of an entity described in Subsections (18)(a) through (e).

(19) "Federally regulated appraisal management company" means an appraisal management company that is:

(a) owned and controlled by an insured depository institution, as defined in 12 U.S.C. Sec. 1813; and

(b) regulated by:

- (i) the Office of the Comptroller of the Currency;
- (ii) the Board of Governors of the Federal Reserve System; or
- (iii) the Federal Deposit Insurance Corporation.

(20) "Independent contractor" means an appraiser whom an appraisal management company treats as an independent contractor for purposes of federal income taxation.

(21) "Person" means an individual or an entity.

(22) "Person who regularly extends credit" means a person who:

(a) extends credit, other than credit subject to the requirements of 12 C.F.R. Sec. 1026.32, to a person who has been extended credit for transactions secured by a dwelling more than five times in:

- (i) the preceding calendar year; or
- (ii) the current calendar year;

(b) originates two or more credit extensions that are subject to the requirements of 12 C.F.R. Sec. 1026.32; or

(c) originates through a mortgage broker a credit extension that is subject to the requirements of 12 C.F.R. Sec. 1026.32.

(23) "Real estate appraisal activity" means the same as that term is defined in Section 61-2g-102.

(24) "Residential mortgage loan" means the same as that term is defined in Section 61-2c-102.

## HB0211S01 compared with HB0211

(25) (a) "Secondary mortgage market participant" means:

- (i) a guarantor or insurer of a mortgage-backed security; or
- (ii) an underwriter or insurer of a mortgage-backed security.

(b) "Secondary mortgage market participant" includes an individual investor in a mortgage-backed security, if the investor is also the guarantor, insurer, underwriter, or issuer of the mortgage-backed security.

(26) "Territory" means any of the following United States territories:

- (a) Guam;
- (b) Northern Mariana Islands;
- (c) Puerto Rico; or
- (d) United States Virgin Islands.

Section 4. Section **61-2e-205** is amended to read:

**61-2e-205. Division service fees -- National registry form and fees -- Suspension and revocation of registration -- Removal from national registry.**

(1) The division, with the concurrence of the board, shall establish and collect fees, in accordance with Section 63J-1-504, for services the division renders to carry out this chapter.

(2) An appraisal management company registered under this chapter shall, on or before May 31 of each year, file with the division a national registry reporting form in the manner prescribed by the division.

~~[(2)]~~ (3) ~~[(a)]~~ The division shall:

~~[(i)]~~ (a) collect the annual national registry fee established by the Appraisal

Subcommittee from:

~~[(A)]~~ (i) each appraisal management company registered under this chapter; and

~~[(B)]~~ (ii) each federally regulated appraisal management company; and

~~[(ii)]~~ (b) transfer the fees collected under Subsection ~~[(2)(a)]~~ (3)(a) to the Appraisal

Subcommittee on a monthly basis.

~~[(b)]~~ (4) If an appraisal management company registered under this chapter fails to pay the annual national registry fee ~~[established by the Appraisal Subcommittee]~~ described in Subsection (3) or file the national registry reporting form in accordance with Subsection (2), the division may suspend or revoke the appraisal management company's registration.

~~[(3)]~~ (5) If an appraisal management company pays a fee or cost to the division with a



## HB0211S01 compared with HB0211

negotiable instrument or any other payment method that is not honored, the division:

- (a) may void the transaction for which the payment is submitted;
- (b) may reverse the transaction, if the division does not receive full payment of the

applicable fee or cost; and

- (c) shall suspend the appraisal management company's registration:
  - (i) beginning the day on which the payment is due; and
  - (ii) ending the day on which payment is made in full.

### Section 5. Section 61-2f-305 is amended to read:

#### **61-2f-305. Restrictions on commissions.**

(1) Except as provided in Subsection (2), an associate broker or sales agent may not accept valuable consideration for the performance of an act specified in this chapter from a person except the principal broker with whom the associate broker or sales agent is affiliated.

(2) An associate broker or sales agent may receive valuable consideration for the performance of an act specified in this chapter from a person other than the principal broker with whom the associate broker or sales agent is affiliated if:

(a) the valuable consideration is paid with a payment instrument prepared by a title insurance agent; and

~~[(b) the title insurance agent provides the payment instrument to the principal broker;]~~

~~[(c)]~~ (b) the title insurance agent complies with the written instructions of the principal broker:

(i) in preparing the payment instrument; and

(ii) delivering the payment instrument to the ~~principal broker; and~~ associate broker or sales agent.

~~[(d) the principal broker directly delivers the payment instrument to the associate broker or sales agent.]~~

(3) The commission, with the concurrence of the division, ~~shall~~ may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) defining what constitutes a "payment instrument" for purposes of this section; or

(b) the form and contents of the written instructions required by Subsection (2), including providing that the contents of the written instructions indicate that the payment instrument process is an assignment to the associate broker or sales agent by the principal

## HB0211S01 compared with HB0211

broker of a portion of the consideration the title insurance agent is obligated to pay the principal broker.

Section ~~5~~6. Section **61-2f-401** is amended to read:

### **61-2f-401. Grounds for disciplinary action.**

The following acts are unlawful and grounds for disciplinary action for a person licensed or required to be licensed under this chapter:

- (1) (a) making a substantial misrepresentation, including in a licensure statement;
  - (b) making an intentional misrepresentation;
  - (c) pursuing a continued and flagrant course of misrepresentation;
  - (d) making a false representation or promise through an agent, sales agent, advertising, or otherwise; or
  - (e) making a false representation or promise of a character likely to influence, persuade, or induce;
- (2) acting for more than one party in a transaction without the informed written consent of the parties;
  - (3) (a) acting as an associate broker or sales agent while not affiliated with a principal broker;
  - (b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or
  - (c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;
  - (4) (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;
  - (b) commingling money described in Subsection (4)(a) with the person's own money;
- or
- (c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;
  - (5) paying or offering to pay valuable consideration to a person not licensed under this chapter, except that valuable consideration may be shared:
    - (a) with a principal broker of another jurisdiction; or
    - (b) as provided under:

## HB0211S01 compared with HB0211

- (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
  - (ii) Title 16, Chapter 11, Professional Corporation Act; or
  - (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;
- (6) for a principal broker, paying or offering to pay a sales agent or associate broker who is not affiliated with the principal broker at the time the sales agent or associate broker earned the compensation;
- (7) being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;
- (8) failing to voluntarily furnish a copy of a document to the parties before and after the execution of a document;
- (9) failing to keep and make available for inspection by the division a record of each transaction, including:
- (a) the names of buyers and sellers or lessees and lessors;
  - (b) the identification of real estate;
  - (c) the sale or rental price;
  - (d) money received in trust;
  - (e) agreements or instructions from buyers and sellers or lessees and lessors; and
  - (f) any other information required by rule;
- (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;
- (11) regardless of whether the crime is related to the business of real estate:
- (a) be convicted of:
    - (i) a felony; or
    - (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
      - (A) a class A misdemeanor;
      - (B) a class B misdemeanor; or
      - (C) a criminal offense comparable to a class A or class B misdemeanor;
  - (b) plead guilty or nolo contendere to:
    - (i) a felony; or
    - (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:

## HB0211S01 compared with HB0211

- (A) a class A misdemeanor;
- (B) a class B misdemeanor; or
- (C) a criminal offense comparable to a class A or class B misdemeanor;
- (c) enter into a plea in abeyance agreement in relation to:
  - (i) a felony; or
  - (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
    - (A) a class A misdemeanor;
    - (B) a class B misdemeanor; or
    - (C) a criminal offense comparable to a class A or class B misdemeanor;
- (12) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;
- (13) in the case of a principal broker or a branch broker, failing to exercise active and reasonable supervision, as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the principal broker's or branch broker's licensed or unlicensed staff;
  - (14) violating or disregarding:
    - (a) this chapter;
    - (b) an order of the commission; or
    - (c) the rules adopted by the commission and the division;
  - (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;
  - (16) any other conduct which constitutes dishonest dealing;
  - (17) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:
    - (a) a real estate license, registration, or certificate issued by another jurisdiction; or
    - (b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;
  - (18) failing to respond to a request by the division in an investigation authorized under this chapter within 10 days after the day on which the request is served, including:
    - (a) failing to respond to a subpoena;

## HB0211S01 compared with HB0211

(b) withholding evidence; or

(c) failing to produce documents or records;

(19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

(a) providing a title insurance product or service without the approval required by Section 31A-2-405; or

(b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2);

(20) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court;

(21) violating Title 57, Chapter 30, Residential Property Service Agreements;

~~[(21)]~~ (22) (a) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;

(b) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;

(c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:

(i) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or

(ii) falsely representing or advertising that the licensee is acting on behalf of:

(A) a government agency;

(B) the person's lender or loan servicer; or

(C) a nonprofit or charitable institution; or

(d) recommending or participating in a foreclosure rescue that requires a person to:

(i) transfer title to real estate to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;

(ii) make a mortgage payment to a person other than the person's loan servicer; or

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

## HB0211S01 compared with HB0211

(D) credit counselor; or

(E) housing counselor;

~~[(22)]~~ (23) taking or removing from the premises of a main office or a branch office, or otherwise limiting a real estate brokerage's access to or control over, a record that:

(a) (i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated independent contractor prepared; and

(ii) is related to the business of:

(A) the real estate brokerage; or

(B) an associate broker, a branch broker, or a sales agent of the real estate brokerage; or

(b) is related to the business administration of the real estate brokerage;

~~[(23)]~~ (24) as a principal broker, placing a lien on real property, unless authorized by law;

~~[(24)]~~ (25) as a sales agent or associate broker, placing a lien on real property for an unpaid commission or other compensation related to real estate brokerage services; or

~~[(25)]~~ (26) failing to timely disclose to a buyer or seller an affiliated business arrangement, as defined in Section 31A-23a-1001, in accordance with the federal Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.