

1                                   **REAL ESTATE TRANSACTION AMENDMENTS**

2   2016 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Brian M. Greene**

5                                   Senate Sponsor: Lincoln Fillmore

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7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ enacts the Undivided Fractionalized Long-Term Estate Sales Practices Act;
- 14           ▶ defines terms;
- 15           ▶ provides licensing and disclosure requirements for the sale or offer of an undivided  
16 fractionalized long-term estate;
- 17           ▶ addresses the Division of Real Estate's rulemaking, investigatory, and enforcement  
18 powers;
- 19           ▶ provides procedures to enforce compliance with the provisions of this bill;
- 20           ▶ repeals certain disclosure requirements and rulemaking authority relating to the sale  
21 or offer of an undivided fractionalized long-term estate; and
- 22           ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24           None

25 **Other Special Clauses:**

26           None

27 **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 **57-29-103**, Utah Code Annotated 1953

37 **57-29-201**, Utah Code Annotated 1953

38 **57-29-202**, Utah Code Annotated 1953

39 **57-29-203**, Utah Code Annotated 1953

40 **57-29-301**, Utah Code Annotated 1953

41 **57-29-302**, Utah Code Annotated 1953

42 **57-29-303**, Utah Code Annotated 1953

43 **57-29-304**, Utah Code Annotated 1953

44 **57-29-305**, Utah Code Annotated 1953

45 REPEALS:

46 **61-2f-307**, as renumbered and amended by Laws of Utah 2010, Chapter 379



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

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

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

51 **SALES PRACTICES ACT**

52 **Part 1. General Provisions**

53 **57-29-101. Title.**

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

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

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

58 **57-29-102. Definitions.**

59 As used in this chapter:

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

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

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

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

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

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

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

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

74 (i) a tenancy in common; or

75 (ii) a fee estate.

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

77 Section 3. Section **57-29-103** is enacted to read:

78 **57-29-103. Applicability.**

79 This chapter does not apply to property that is subject to Title 57, Chapter 19,

80 Timeshare and Camp Resort Act.

81 Section 4. Section **57-29-201** is enacted to read:

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

83 **57-29-201. Title.**

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

85 Section 5. Section **57-29-202** is enacted to read:

86 **57-29-202. License required.**

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

91 Section 6. Section **57-29-203** is enacted to read:

92 **57-29-203. Required disclosures.**

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

96 (a) if applicable:

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

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

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

102 (c) includes a copy of:

103 (i) a tenants in common agreement; or

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

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

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

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

110 and

111 (g) includes any additional information that an ordinarily prudent purchaser would  
112 consider material to deciding whether to purchase the undivided fractionalized long-term  
113 estate, as determined by the commission, with concurrence by the division, by rule in

114 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

115 (2) A sponsor or licensee who sells or offers to sell an undivided fractionalized  
116 long-term estate shall provide the written disclosure described in Subsection (1) to the  
117 prospective purchaser before the prospective purchaser purchases the undivided fractionalized  
118 long-term estate.

119 Section 7. Section **57-29-301** is enacted to read:

120 **Part 3. Investigation and Enforcement**

121 **57-29-301. Title.**

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

123 Section 8. Section **57-29-302** is enacted to read:

124 **57-29-302. Rulemaking.**

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

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

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

130 Section 9. Section **57-29-303** is enacted to read:

131 **57-29-303. Investigatory powers and proceedings of division.**

132 (1) The division may:

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

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

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

139 (a) administer oaths or affirmations; and

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

141 (i) subpoena a witness;

- 142           (ii) compel a witness's attendance;
- 143           (iii) take evidence; or
- 144           (iv) require the production, within 10 business days, of any information or item that is
- 145 relevant to the investigation, including:
- 146           (A) the existence, description, nature, custody, condition, and location of any books,
- 147 electronic records, documents, or other tangible records;
- 148           (B) the identity and location of any person who has knowledge of relevant facts; or
- 149           (C) any other information or item that is reasonably calculated to lead to the discovery
- 150 of material evidence.

151           (3) If a person fails to obey a subpoena or other request made in accordance with this

152 section, the division may file an action in district court for an order compelling compliance.

153           Section 10. Section **57-29-304** is enacted to read:

154           **57-29-304. Enforcement.**

155           (1) (a) If the director believes that a person has been or is engaging in conduct that

156 violates this chapter, the director:

- 157           (i) shall issue and serve upon the person a cease and desist order; and
- 158           (ii) may order the person to take any action necessary to carry out the purposes of this
- 159 chapter.

160           (b) (i) A person served with an order under Subsection (1)(a) may request a hearing

161 within 10 days after the day on which the person is served.

162           (ii) (A) If a person requests a hearing in accordance with Subsection (1)(b)(i), the

163 director shall schedule a hearing to take place no more than 30 days after the day on which the

164 director receives the request.

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

166           (iii) If the director fails to schedule a hearing in accordance with Subsection

167 (1)(b)(ii)(A), the cease and desist order is vacated.

168           (c) The division shall conduct a hearing described in Subsection (1)(b) in accordance

169 with Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

181 Section 11. Section **57-29-305** is enacted to read:

182 **57-29-305. Voidable agreements.**

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

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

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

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

192 Section 12. Section **61-1-13** is amended to read:

193 **61-1-13. Definitions.**

194 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

218 (A) an agent;

219 (B) an issuer;

220 (C) a depository institution or trust company;

221 (D) a person who has no place of business in this state if:

222 (I) the person effects transactions in this state exclusively with or through:

223 (Aa) the issuers of the securities involved in the transactions;

224 (Bb) other broker-dealers;

225 (Cc) a depository institution, whether acting for itself or as a trustee;



- 226 (Dd) a trust company, whether acting for itself or as a trustee;
- 227 (Ee) an insurance company, whether acting for itself or as a trustee;
- 228 (Ff) an investment company, as defined in the Investment Company Act of 1940,  
229 whether acting for itself or as a trustee;
- 230 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
- 231 (Hh) another financial institution or institutional buyer, whether acting for itself or as a  
232 trustee; or
- 233 (Ii) during any period of 12 consecutive months the person does not direct more than  
234 15 offers to sell or buy into this state in any manner to persons other than those specified in  
235 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
- 236 (E) a general partner who organizes and effects transactions in securities of three or  
237 fewer limited partnerships, of which the person is the general partner, in any period of 12  
238 consecutive months;
- 239 (F) a person whose participation in transactions in securities is confined to those  
240 transactions made by or through a broker-dealer licensed in this state;
- 241 (G) a person who is a principal broker or associate broker licensed in this state and  
242 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel  
243 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire  
244 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of  
245 indebtedness secured thereby, is offered and sold as a unit;
- 246 (H) a person effecting transactions in commodity contracts or commodity options;
- 247 (I) a person described in Subsection (3); or
- 248 (J) other persons as the division, by rule or order, may designate, consistent with the  
249 public interest and protection of investors, as not within the intent of this Subsection (1)(c).
- 250 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or  
251 acquisition of a security or interest in a security for value.
- 252 (e) "Commission" means the Securities Commission created in Section [61-1-18.5](#).
- 253 (f) "Commodity" means, except as otherwise specified by the division by rule:

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

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

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

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

262 (v) a foreign currency; and

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

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

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

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

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

282 commodities.

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

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

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

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

292 (i) "Depository institution" [~~is as~~] means the same as that term is defined in Section  
293 7-1-103.

294 (j) "Director" means the director of the division appointed in accordance with Section  
295 61-1-18.

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

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

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

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

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

302 (n) "Federal covered security" means a security that is a covered security under Section  
303 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of  
304 the Securities Act of 1933.

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

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

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

309 (A) for compensation, engages in the business of advising others, either directly or

310 through publications or writings, as to the value of securities or as to the advisability of  
311 investing in, purchasing, or selling securities; or

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

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

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

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

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

321 (A) an investment adviser representative;

322 (B) a depository institution or trust company;

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

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

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

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

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

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

336 (r) (i) "Investment adviser representative" means a partner, officer, director of, or a  
337 person occupying a similar status or performing similar functions, or other individual, except

338 clerical or ministerial personnel, who:

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

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

343 (B) does any of the following:

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

345 (II) manages accounts or portfolios of clients;

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

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

348 or

349 (V) supervises employees who perform any of the acts described in this Subsection

350 (1)(r)(i)(B).

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

353 (s) "Investment contract" includes:

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

356 (ii) an investment by which:

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

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

359 (C) the furnishing of the initial value is induced by the offerer's promises or  
360 representations that give rise to a reasonable understanding that a valuable benefit of some kind  
361 over and above the initial value will accrue to the offeree as a result of the operation of the  
362 enterprise; and

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

365 (t) "Isolated transaction" means not more than a total of two transactions that occur

366 anywhere during six consecutive months.

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

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

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

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

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

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

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

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

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

388 (A) a policy; or

389 (B) the death benefit under a policy.

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

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

393 (x) "Person" means:

- 394 (i) an individual;
- 395 (ii) a corporation;
- 396 (iii) a partnership;
- 397 (iv) a limited liability company;
- 398 (v) an association;
- 399 (vi) a joint-stock company;
- 400 (vii) a joint venture;
- 401 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
- 402 (ix) an unincorporated organization;
- 403 (x) a government; or
- 404 (xi) a political subdivision of a government.
- 405 (y) "Precious metal" means the following, whether in coin, bullion, or other form:
- 406 (i) silver;
- 407 (ii) gold;
- 408 (iii) platinum;
- 409 (iv) palladium;
- 410 (v) copper; and
- 411 (vi) such other substances as the division may specify by rule.
- 412 (z) "Promoter" means a person who, acting alone or in concert with one or more
- 413 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 414 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
- 415 is:
- 416 (A) inscribed in a tangible medium; or
- 417 (B) (I) stored in an electronic or other medium; and
- 418 (II) retrievable in perceivable form.
- 419 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
- 420 including when "record" is used in the following phrases:
- 421 (A) "of record";

422 (B) "official record"; or

423 (C) "public record."

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

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

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

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

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

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

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

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

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

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



- 450 (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:
- 451 (A) a good faith gift;
- 452 (B) a transfer by death;
- 453 (C) a transfer by termination of a trust or of a beneficial interest in a trust;
- 454 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or
- 455 (E) a securities split or reverse split.
- 456 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment
- 457 Company Act of 1940" mean the federal statutes of those names as amended before or after the
- 458 effective date of this chapter.
- 459 (dd) "Securities Exchange Commission" means the United States Securities Exchange
- 460 Commission created by the Securities Exchange Act of 1934.
- 461 (ee) (i) "Security" means a:
- 462 (A) note;
- 463 (B) stock;
- 464 (C) treasury stock;
- 465 (D) bond;
- 466 (E) debenture;
- 467 (F) evidence of indebtedness;
- 468 (G) certificate of interest or participation in a profit-sharing agreement;
- 469 (H) collateral-trust certificate;
- 470 (I) preorganization certificate or subscription;
- 471 (J) transferable share;
- 472 (K) investment contract;
- 473 (L) burial certificate or burial contract;
- 474 (M) voting-trust certificate;
- 475 (N) certificate of deposit for a security;
- 476 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 477 payments out of production under such a title or lease;

478 (P) commodity contract or commodity option;

479 (Q) interest in a limited liability company;

480 (R) life settlement interest; or

481 (S) in general, an interest or instrument commonly known as a "security," or a  
482 certificate of interest or participation in, temporary or interim certificate for, receipt for,  
483 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections  
484 (1)(ee)(i)(A) through (R).

485 (ii) "Security" does not include:

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

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

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

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

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

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

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

505 ~~[(Cc) the management agreement complies with any other requirement imposed by rule~~

506 ~~by the Real Estate Commission under Section 61-2f-103.]~~

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

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

513 (gg) (i) "Undivided fractionalized long-term estate" means ~~[an ownership interest in~~  
514 ~~real property by two or more persons that is:]~~ the same as that term is defined in Section  
515 57-29-102.

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

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

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

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

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

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

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

524 (ii) that results in:

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

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

529 (iii) to:

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

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

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

- 534 (ii) "Vulnerable adult" means an individual whose age or mental or physical  
535 impairment substantially affects that individual's ability to:
- 536 (i) manage the individual's resources; or
  - 537 (ii) comprehend the nature and consequences of making an investment decision.
- 538 (jj) "Whole long-term estate" means a person owns or persons through joint tenancy  
539 own real property through a fee estate.
- 540 (kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of  
541 legal holidays listed in Section [63G-1-301](#).

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

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

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

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

554 Section 13. Section **61-2-201** is amended to read:

555 **61-2-201. Division of Real Estate created -- Director appointed -- Personnel.**

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

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

562 (e) Title 57, Chapter 29, Undivided Fractionalized Long-Term Estate Sales Practices

563 Act;

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

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

566 Act;

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

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

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

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

575 Section 14. Section **61-2f-102** is amended to read:

576 **61-2f-102. Definitions.**

577 As used in this chapter:

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

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

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

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

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

585 (a) a Saturday;

586 (b) a Sunday; or

587 (c) a federal or state holiday.

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

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

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

593 ~~[(8)]~~ (7) "Condominium homeowners' association" means the condominium unit  
594 owners acting as a group in accordance with declarations and bylaws.

595 ~~[(9)]~~ (8) (a) "Condominium hotel" means one or more condominium units that are  
596 operated as a hotel.

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

599 ~~[(7)]~~ (9) "Condominium unit" ~~[is as]~~ means the same as that term is defined in Section  
600 [57-8-3](#).

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

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

603 (12) "Entity" means:

604 (a) a corporation;

605 (b) a partnership;

606 (c) a limited liability company;

607 (d) a company;

608 (e) an association;

609 (f) a joint venture;

610 (g) a business trust;

611 (h) a trust; or

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

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

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

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

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

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

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

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

621 (14)(a); or

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

623 (15) "Loan modification assistance" means, for compensation or with the expectation

624 of receiving valuable consideration, to:

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

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

627 loan term, including:

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

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

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

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

632 (E) an addition of collateral;

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

634 (G) an addition of a cosigner; or

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

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

637 or

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

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

640 (15)(a); or

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

642 (16) "Main office" means the address which a principal broker designates with the

643 division as the principal broker's primary brokerage office.

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

645 (18) "Principal broker" means an individual who is licensed as a principal broker under

646 this chapter and who:

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

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

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

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

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

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

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

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

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

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

672 (19) (a) "Property management" means engaging in, with the expectation of receiving  
673 valuable consideration, the management of real estate owned by another person or advertising



674 or otherwise claiming to be engaged in property management by:

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

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

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

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

681 (i) hotel or motel management;

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

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

688 (20) "Real estate" includes leaseholds and business opportunities involving real  
689 property.

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

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

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

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

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

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

701 (a) affiliated with a principal broker, either as an independent contractor or an

702 employee as provided in Section 61-2f-303, to perform for valuable consideration an act  
703 described in Subsection (18); and

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

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

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

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

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

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

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

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

713 Section 15. Section 61-2f-103 is amended to read:

714 **61-2f-103. Real Estate Commission.**

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

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

720 (i) licensing of:

721 (A) a principal broker;

722 (B) an associate broker; and

723 (C) a sales agent;

724 (ii) registration of:

725 (A) an entity; and

726 (B) a branch office;

727 (iii) prelicensing and postlicensing education curricula;

728 (iv) examination procedures;

729 (v) the certification and conduct of:

- 730 (A) a real estate school;
- 731 (B) a course provider; or
- 732 (C) an instructor;
- 733 (vi) proper handling of money received by a licensee under this chapter;
- 734 (vii) brokerage office procedures and recordkeeping requirements;
- 735 (viii) property management;
- 736 (ix) standards of conduct for a licensee under this chapter; and
- 737 [~~(x) a rule made under Section 61-2f-307 regarding an undivided fractionalized~~
- 738 ~~long-term estate; and]~~
- 739 [~~(xi)~~ (x) if the commission determines necessary, a rule as provided in Subsection
- 740 61-2f-306(3) regarding a legal form;
- 741 (b) establish, with the concurrence of the division, a fee provided for in this chapter,
- 742 except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;
- 743 (c) conduct an administrative hearing not delegated by the commission to an
- 744 administrative law judge or the division relating to the:
- 745 (i) licensing of an applicant;
- 746 (ii) conduct of a licensee;
- 747 (iii) the certification or conduct of a real estate school, course provider, or instructor
- 748 regulated under this chapter; or
- 749 (iv) violation of this chapter by any person;
- 750 (d) with the concurrence of the director, impose a sanction as provided in Section
- 751 61-2f-404;
- 752 (e) advise the director on the administration and enforcement of a matter affecting the
- 753 division and the real estate sales and property management industries;
- 754 (f) advise the director on matters affecting the division budget;
- 755 (g) advise and assist the director in conducting real estate seminars; and
- 756 (h) perform other duties as provided by this chapter.
- 757 (2) (a) Except as provided in Subsection (2)(b), a state entity may not, without the

758 concurrence of the commission, make a rule that changes the rights, duties, or obligations of  
759 buyers, sellers, or persons licensed under this chapter in relation to a real estate transaction  
760 between private parties.

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

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

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

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

767 (b) Four of the commission members shall:

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

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

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

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

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

776 (4) (a) Except as required by Subsection (4)(b), as terms of current commission  
777 members expire, the governor shall appoint each new member or reappointed member to a  
778 four-year term ending June 30.

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

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

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

- 786 (e) Members of the commission shall annually select one member to serve as chair.
- 787 (5) When a vacancy occurs in the membership for any reason, the governor, with the  
788 consent of the Senate, shall appoint a replacement for the unexpired term.
- 789 (6) A member may not receive compensation or benefits for the member's service, but  
790 may receive per diem and travel expenses in accordance with:
- 791 (a) Section 63A-3-106;
- 792 (b) Section 63A-3-107; and
- 793 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
794 63A-3-107.
- 795 (7) (a) The commission shall meet at least monthly.
- 796 (b) The director may call additional meetings:
- 797 (i) at the director's discretion;
- 798 (ii) upon the request of the chair; or
- 799 (iii) upon the written request of three or more commission members.
- 800 (8) Three members of the commission constitute a quorum for the transaction of  
801 business.
- 802 Section 16. **Repealer.**
- 803 This bill repeals:
- 804 Section 61-2f-307, **Rulemaking required for offer or sale of an undivided**  
805 **fractionalized long-term estate -- Disclosures -- Management agreement.**