

**DISCLOSURE REQUIREMENTS PRIOR TO SALE OF REAL
ESTATE**

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas V. Sagers

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Real Property Disclosure Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an owner of real property to give a purchaser a copy of a completed hazardous waste disclosure form, developed by the Division of Real Estate, before the purchaser becomes obligated to purchase an interest in the real property;
- ▶ provides a purchaser of an interest in real property 15 business days to perform hazardous waste testing on the real property, unless the owner and the purchaser agree to a different time period;
- ▶ requires a real estate purchase contract for the sale of an interest in real property to include signed acknowledgments that the owner has complied with the requirements described in this bill;
- ▶ exempts certain conveyances from the requirements described in this bill;
- ▶ provides a procedure to enforce compliance with the provisions of this bill;
- ▶ allows the division to make rules relating to hazardous waste disclosures, inspection, and testing; and
- ▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **61-2-201**, as last amended by Laws of Utah 2011, Chapter 289

35 ENACTS:

36 **57-28-101**, Utah Code Annotated 1953

37 **57-28-102**, Utah Code Annotated 1953

38 **57-28-201**, Utah Code Annotated 1953

39 **57-28-202**, Utah Code Annotated 1953

40 **57-28-203**, Utah Code Annotated 1953

41 **57-28-204**, Utah Code Annotated 1953

42 **57-28-205**, Utah Code Annotated 1953

43 **57-28-206**, Utah Code Annotated 1953

44 **57-28-301**, Utah Code Annotated 1953

45 **57-28-302**, Utah Code Annotated 1953

46 **57-28-303**, Utah Code Annotated 1953



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

49 Section 1. Section **57-28-101** is enacted to read:

50 **CHAPTER 28. REAL PROPERTY DISCLOSURE ACT**

51 **Part 1. General Provisions**

52 **57-28-101. Title.**

53 (1) This chapter is known as the "Real Property Disclosure Act."

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

55 Section 2. Section **57-28-102** is enacted to read:

56 **57-28-102. Definitions.**

57 As used in this chapter:

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

59 (2) "Hazardous waste" is as defined by the United States Environmental Protection
60 Agency in 40 C.F.R. Part 261.

61 (3) "Owner" means the holder of a legal or equitable title or interest in real property.
62 Section 3. Section **57-28-201** is enacted to read:

63 **Part 2. Hazardous Waste Disclosure Requirements**

64 **57-28-201. Title.**

65 This part is known as "Hazardous Waste Disclosure Requirements."

66 Section 4. Section **57-28-202** is enacted to read:

67 **57-28-202. Required disclosures.**

68 (1) Before a purchaser is obligated to purchase an interest in real property from an
69 owner, the owner shall:

70 (a) complete a hazardous waste disclosure form described in Subsection (2); and

71 (b) give the purchaser a copy of the completed hazardous waste disclosure form.

72 (2) The division shall develop and make available to the public a hazardous waste
73 disclosure form that requires the disclosing owner to:

74 (a) disclose any known hazardous waste presently or formerly found on the owner's
75 real property that is likely to materially affect the value of the property, including:

76 (i) each type of hazardous waste;

77 (ii) the amount of each type of hazardous waste;

78 (iii) how the owner became aware of the presence of each type of hazardous waste;

79 (iv) the dates during which each type of hazardous waste was present on the property;

80 (v) whether each type of hazardous waste is currently present on the property; and

81 (vi) the date the owner became aware of the presence of each type of hazardous waste;

82 and

83 (b) disclose any known efforts to clean up or remediate each type of hazardous waste
84 disclosed under Subsection (2)(a), including:

85 (i) the person who performed the cleanup or remediation;

86 (ii) the type of cleanup or remediation that was performed;

87 (iii) the date the cleanup or remediation was performed; and

88 (iv) the results of the cleanup or remediation.

89 Section 5. Section **57-28-203** is enacted to read:

90 **57-28-203. Optional inspection and testing.**

91 (1) After an owner complies with the requirements described in Section 57-28-202 and
92 before the purchaser is obligated to purchase an interest in real property from the owner, the
93 owner shall provide the purchaser 15 business days to conduct any hazardous waste inspection
94 or testing on the property.

95 (2) The owner and the purchaser may mutually agree, in writing, to a time period
96 different from the 15-day time period described in Subsection (1).

97 Section 6. Section **57-28-204** is enacted to read:

98 **57-28-204. Opportunity to revoke or cancel.**

99 If, based upon a completed hazardous waste disclosure form described in Section
100 57-28-202 or an inspection or testing performed under Section 57-28-203, a purchaser learns
101 that the real property presently or formerly contained hazardous waste that is likely to
102 materially affect the value of the real property, the purchaser may revoke any offer, or cancel
103 any agreement, to purchase an interest in the real property no later than:

104 (1) the day on which the 15-day period described in Subsection 57-28-203(1) ends; or

105 (2) if the owner and the purchaser mutually agree to a different time period under

106 Subsection 57-28-203(2), the day on which the different time period ends.

107 Section 7. Section **57-28-205** is enacted to read:

108 **57-28-205. Real estate purchase contract -- Required contents.**

109 Each contract for the purchase of an interest in real property shall contain a provision,
110 signed by the purchaser, that states that the purchaser has:

111 (1) received a completed hazardous waste disclosure form;

112 (2) reviewed the completed hazardous waste disclosure form; and

113 (3) had an opportunity to perform hazardous waste inspection and testing on the

114 property in accordance with the requirements described in Section 57-28-203.

115 Section 8. Section **57-28-206** is enacted to read:

116 **57-28-206. Exemptions.**

117 The provisions of this part do not apply to a conveyance:

118 (1) made pursuant to court order;

119 (2) between co-owners;

120 (3) between spouses or former spouses that results from a divorce, dissolution of

121 marriage, annulment, or legal separation; or

122 (4) made by a trustee's sale.

123 Section 9. Section **57-28-301** is enacted to read:

124 **Part 3. Administration and Enforcement**

125 **57-28-301. Title.**

126 This part is known as "Administration and Enforcement."

127 Section 10. Section **57-28-302** is enacted to read:

128 **57-28-302. Rulemaking.**

129 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
130 consistent with this chapter, the division may make rules governing:

131 (1) the content, form, and procedures relating to hazardous waste-related disclosures;
132 and

133 (2) the contents of a real estate purchase contract relating to hazardous waste
134 inspection, testing, and disclosures.

135 Section 11. Section **57-28-303** is enacted to read:

136 **57-28-303. Private action.**

137 (1) If an owner fails to comply with a provision of this chapter, fails to fully disclose
138 all information required by the hazardous waste disclosure form, or knowingly provides false
139 information on a hazardous waste disclosure form, the purchaser may file an action in district
140 court:

141 (a) to void the sale of the real property; or

142 (b) for damages, including the cost to remediate any undisclosed hazardous waste.

143 (2) In an action filed under Subsection (1), the court may award costs, including expert
144 witness fees, and reasonable attorney fees to the party that commenced the action if the party
145 that commenced the action is the prevailing party.

146 Section 12. Section **61-2-201** is amended to read:

147 **61-2-201. Division of Real Estate created -- Director appointed -- Personnel.**

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

150 (a) this chapter;

151 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

- 152 (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 153 (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
- 154 (e) Title 57, Chapter 28, Real Property Disclosure Act;
- 155 [~~(e)~~] (f) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;
- 156 [~~(f)~~] (g) Chapter 2e, Appraisal Management Company Registration and Regulation
- 157 Act;
- 158 [~~(g)~~] (h) Chapter 2f, Real Estate Licensing and Practices Act; and
- 159 [~~(h)~~] (i) Chapter 2g, Real Estate Appraiser Licensing and Certification Act.
- 160 (2) The division is under the direction and control of a director appointed by the
- 161 executive director of the department with the approval of the governor. The director holds the
- 162 office of director at the pleasure of the governor.
- 163 (3) The director, with the approval of the executive director, may employ personnel
- 164 necessary to discharge the duties of the division at salaries to be fixed by the director according
- 165 to standards established by the Department of Administrative Services.

Legislative Review Note
as of 1-3-14 11:00 AM

Office of Legislative Research and General Counsel