

DEFINITION OF A SECURITY

Citations from the Utah Uniform Securities Act

61-1-13 Definition

(1) As used in this chapter:

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

- (A) note;
- (B) stock;
- (C) treasury stock;
- (D) bond;
- (E) debenture;
- (F) evidence of indebtedness;
- (G) certificate of interest or participation in a profit-sharing agreement;
- (H) collateral-trust certificate;
- (I) preorganization certificate or subscription;
- (J) transferable share;
- (K) investment contract;
- (L) burial certificate or burial contract;
- (M) voting-trust certificate;
- (N) certificate of deposit for a security;
- (O) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;
- (P) commodity contract or commodity option;
- (Q) interest in a limited liability company;
- (R) life settlement interest; or
- (S) in general, an interest or instrument commonly known as a "security," or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections (1)(ee)(i)(A) through (R).

(ii) "Security" does not include:

- (A) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a lump sum or periodically for life or some other specified period;
- (B) an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; or
- (C) (I) a whole long-term estate in real property;
- (II) an undivided fractionalized long-term estate in real property that consists of ten or fewer owners; or
- (III) an undivided fractionalized long-term estate in real property that consists of more than ten owners if, when the real property estate is subject to a management agreement:
 - (Aa) the management agreement permits a simple majority of owners of the real property estate to not renew or to terminate the management agreement at the earlier of the end of the management agreement's current term, or 180 days after the day on which the owners give notice of termination to the manager;
 - (Bb) the management agreement prohibits, directly or indirectly, the lending of the proceeds earned from the real property estate or the use or pledge of its assets to a person or entity affiliated with or under common control of the manager; and
 - (Cc) the management agreement complies with any other requirement imposed by rule by the Real Estate Commission under Section 61-2-26.

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

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- (gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is a:
 - (A) tenancy in common; or
 - (B) any other legal form of undivided estate in real property including:
 - (I) a fee estate;
 - (II) a life estate; or
 - (III) other long-term estate.
- (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

- (hh) "Whole long-term estate" means a person owns or persons through joint tenancy own real property through:
 - (i) a fee estate;
 - (ii) a life estate; or
 - (iii) other long-term estate.

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

- (3) (a) This Subsection (3) applies to:

- (i) the offer or sale of a real property estate exempted from the definition of security under Subsection (1)(ee)(ii)(C); or
- (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a security.

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

- (i) a principal real estate broker;
- (ii) an associate real estate broker; or
- (iii) a real estate sales agent.

- (4) The list of real property estates excluded from the definition of securities under Subsection (1)(ee)(ii)(C) is not an exclusive list of real property estates or interests that are not a security.