

Utah Association of REALTORS®

Statement of Policy

Policy Scope

The Utah Association of REALTORS® Statement of Policy is intended to address issues that the UAR's Legislative Committee deals with at the Utah Legislature and through its federal representatives and senators to the United States Congress. For further guidance on federal issues, please refer to the National Association of REALTORS® Statement of Policy.

Mission Statement

The purpose of the Utah Association of REALTORS® is to serve its members representing all facets of the real estate industry by providing and promoting programs and services to enhance members' freedom and ability to conduct their businesses successfully, with integrity and competency, and through collective action to promote the preservation and extension of the right to own, transfer and use real property. (Source: 1997 UAR Business Plan)

Statement of Policy

The Utah Association of REALTORS® is dedicated to the protection and the preservation of the free enterprise system and the right of the individual to own real property as guaranteed by the Constitutions of the United States of America and the State of Utah. To that end, we offer the benefits our knowledge of real estate, our experience, and our technical resources bring to the public in general and the government that serves them. Because we are concerned with a number of issues facing our members and the State of Utah, the following statement of the principles underlying our policy recommendations is provided so that the public will better understand the specific positions on current issues in the remainder of this book.

We believe in the free enterprise system, and oppose undue intervention by the government in the affairs of American business. We oppose counterproductive taxation, governmental guidelines, regulations, rules and procedures which unnecessarily increase consumer costs and unnecessarily burden the business community.

We believe that the political stability and economic prosperity of the United States of America is dependent in large measure upon the right of the individual to own and freely transfer real property and to exercise and enjoy the benefits of ownership. Because we strongly support the full and free exercise of this right, we oppose actions by governments, groups, or individuals which diminish or deny it, and we will concern ourselves with legislation, regulations and litigation which impact on real estate and the REALTOR® organization.

We will continue to be responsive to the increasing needs of our members for direct and indirect economic and professional benefits and services by striving to increase the professional image, standards and productivity of our members. The growing specialized and diversified needs of the members of the various disciplines in the real estate industry in domestic and international markets are also of major importance to our organization. Thus, we will work to ensure that our members in both non-residential and residential specialties provide the highest quality services to their clients, while addressing the continually changing nature of brokerage and business practices in real estate, including the professional and liability concerns of our members. To this end, we will inform our membership of

domestic and international real estate business trends and practices, the effects of changing demographics, promote the benefits of additional real estate education and develop new ways of assisting real estate specialties. We will also work to build coalitions and work with other trade groups, professional associations, and firms in areas such as education programs, legislation, services, marketing and membership.

We believe that homeownership serves as a cornerstone of our democratic system of government and deserves a preferred place in our system of values as it contributes to community responsibility; civic, economic, business, and employment stability; family security; and well being. As real estate professionals we know that homeownership is a primary goal of American families. We also believe that every individual should have the opportunity to live in safe and decent housing. These objectives can best be served by a healthy housing market in an economic environment that fosters an ample supply of affordable and accessible financing provided by both domestic and international sources.

We firmly believe in equal opportunity in housing. No person of this country should have the right to rent or purchase shelter of choice abridged because of race, color, religion, sex, handicap, familial status or national origin. Furthermore, these rights should not be limited because of existing or desired ethnic, racial or religious proportions in any defined area.

We encourage persons of all racial and ethnic groups, both sexes, with and without disabilities, and individuals otherwise protected from discrimination by the Fair Housing Act, are encouraged to participate at all levels within the REALTOR® Associations.

We believe in and support policies that promote the healthy growth of the American economy. Investment in structures, in equipment, and in the skills of people is necessary to increase the standard of living, jobs and household income. To accomplish these goals, we urge changes in tax policy that will encourage savings, investment and homeownership.

We believe that active involvement in political activity is a privilege and responsibility of every citizen. We urge qualified individuals to make themselves available for public service. We encourage continuing participation in local, state, and national political affairs and urge support of those candidates who pledge and by their actions preserve, and indeed strengthen, America's free enterprise system which is based upon the underlying principle of private property ownership.

ENVIRONMENT, ENERGY & DEVELOPMENT

Open Space Policy

As *The Voice for Real Estate™ in Utah*, the Utah Association of REALTORS® recognizes its obligation to provide guidance on issues affecting the land within our borders and the people who own, buy, sell, pay taxes on and enjoy that land. Moreover, the UAR believes that land use policy affects the quality of life in Utah. To that end, in 1998 the UAR formed an Open Space Task Force to study the issues relating to growth, land-use planning, and the preservation of open space, and evaluate proposals to address the aforementioned issues.

What is open space? The term "open space" means different things to different people. Open space could be a park in Murray City, a farm, a cemetery, a "riverwalk" along City Creek in Salt Lake City or the Jordan River, or wilderness. However, to foster predictability in land-use planning, the UAR believes that it is incumbent upon local governments to define what "open space" means for their communities.

The UAR appreciates the efforts of groups like Envision Utah to inform citizens how growth patterns affect land consumption, population density, and infrastructural costs. Some facts, however, must be considered when addressing open space in Utah.

Utah consists of approximately 54,335,500 acres (84,916 square miles). As of 1992, 1.0 percent of the land in Utah had been developed. (By comparison, 1.8 percent of the State of Oregon had been developed in the same year.) (Source: Natural Resources Conservation Service.) Envision Utah's scenarios A, B, C and D for total land consumption along the Wasatch Front in the year 2020 range from 516 to 840 square miles (newly developed land ranges from 85 to 409 square miles). (Source: Envision Utah.)

The federal government owns or controls approximately 67 percent of the land in Utah (including land controlled by the Bureau of Indian Affairs). The State of Utah owns or controls approximately 10 percent of the land within its borders (including lakes and trust lands). A substantial portion of the remaining 23 percent of land in Utah is not developable because of geographic or legal limitations (e.g., slope, wetlands, instability, and/or conservation easements). (Source: School and Institutional Trust Lands Administration.)

In 1996, the Los Angeles metropolitan area had a population density of 5490 people per square mile and the New York metropolitan area had a population density of about 4119 per square mile. By comparison, the 1996 population densities per square mile for Salt Lake City, Provo-Orem, and Ogden are 2441, 1831, and 1542, respectively. (Source: Federal Highway Administration.) Envision Utah's scenarios C & D indicate a population density on the Wasatch Front in 2020 of about 4838 per square mile and 5222 per square mile, respectively. (Source: Envision Utah.)

The UAR believes that the definition of open space may not be as important as those policies that authorize government action to preserve open space.

PRESERVATION OF OPEN SPACE

Private individuals and organizations, both alone or with some government assistance, are already doing much to preserve open space. The creation of land trusts and conservation easements are some of the many ways people are using their own initiative, resources, and creativity to establish an environment they want.

What *shouldn't* be done to preserve open space? In the early 1970s, the Utah Association of REALTORS® joined with most Utahns in rejecting a proposal for statewide land-use planning, and that opposition continues today. The State of Utah and the federal government should minimize their involvement in land use decisions and not withhold government grants and programs to enforce their policies.

The UAR believes in the fundamental right of all private property owners to determine the highest and best use of their land, working through appropriate governmental entities, preferably at the local level. Programs of resource, land and historic preservation designed to protect aquifers, agricultural lands, wetlands, scenic vistas, natural areas, historic properties and open space, may have a positive effect on the quality of life and environment in towns, counties, and municipalities. Land use laws and regulations enacted for the purpose of protecting and enhancing these resources provide benefits to the general public and the costs should thus be borne by the general public.

The UAR recognizes that local governments may require funding to preserve open space. We encourage local governments to find creative ways to finance open space preservation that reduces reliance on tax

revenues. The UAR believes that new tax sources to preserve open space must be subject to voter approval.

Planning for the classification and use of land must adequately consider the needs of housing, agricultural, commercial and industrial growth, as well as quality of life and a healthy local economy. Land-use planning should also take into account the impact of planning on housing affordability.

Each community in Utah should provide its fair share of affordable housing, rather than export their posterity to neighboring cities. To that end, the UAR supports the current state requirement on local governments to report on their efforts to provide affordable housing in their communities. The UAR would also support the reform of local zoning ordinances which currently forbid more efficient uses of land, such as "clustered housing" developments.

Agriculture

We urge that when the issue of agricultural land protection is addressed, all economic factors and private property rights be fully considered before government agencies impose any restrictions on the foreign or corporate ownership or the conversion of agricultural land to non-agricultural purposes.

Clean Air

We support the need to monitor air quality and maintain minimum standards of air quality that are based on verifiable scientific evidence. The State of Utah and/or local governments should have input into the development and application of federal clean air standards. Further, regulators are encouraged to examine and accommodate local diversity when defining federal guidelines.

We support the role of the federal government to: establish national ambient air quality standards for criteria pollutants and make findings on interstate air pollution issues that are based on verifiable scientific evidence; set minimum standards for emissions of hazardous air pollutants based on verifiable health risks; and establish minimum standards for emission from mobile sources.

Furthermore, we believe that the State of Utah should be responsible for monitoring air quality and developing programs to attain and maintain clean air standards. The State of Utah should be provided with adequate funding to carry out the minimum federal standards. State and local program standards which exceed federal minimum standards should balance air quality with economic development. Innovative solutions and market incentives are preferable to government imposed penalties and should be strongly encouraged.

Community Development

REALTORS®, as business people in their community, have a stake in the long term health of neighborhoods. Community revitalization is important to the development of a competitive local economy. The growth of local economies can be stagnated if new jobs and migration are not matched in terms of homeownership opportunities in attractive, viable neighborhoods.

Both the public and private sector have a mutual interest in maintaining their community and in making their neighborhoods a better place to raise a family, shop, work and invest. Homeownership leads to a greater interest in community affairs, better maintenance and a keener sense of neighborhoods. Thus, an interest in community development issues provides a stake in the community and in this nation's economic prosperity.

The Utah Association of REALTORS® recommends that the following elements be incorporated in the design of local community development programs:

- * Programs should meet community needs as determined by each locality -- whether inner city or rural, using measures such as existing community facilities, extent of poverty, economic growth, population changes and unemployment.
- * Programs should have the objective of creating viable neighborhoods by providing economic opportunities.
- * Programs should be directed toward the revitalization of neighborhoods including the preservation and development of housing and improved community facilities and services.
- * Programs should encourage public/private partnerships whenever possible.

Endangered Species

We believe the way in which the Endangered Species Act (ESA) is implemented is of major importance. We support amendments to the Threatened and Endangered Species Act that recognize socioeconomic considerations and provide safeguards to protect property rights in the manner described in the NAR Statement of Policy on Property Rights. In particular, revisions to the Endangered Species Act should address the following:

Incentives provided to private property owners for species protection rather than relying solely on restrictions and penalties.

A strict limitation on how far down the chain of sub-species will be allowed in listings.

Listings of threatened or endangered based on verifiable scientific evidence.

Prompt notification to private property owners regarding potential species listings that might impact their property.

Increased local involvement in creating and implementing recovery plans.

Incorporation of substantial equivalency provisions for states that currently have adequate legislation.

Express written permission of the property owner prior to implementation of a National Biological Survey of private property.

Independent peer review committees should review both the scientific evidence and economic impacts of all listings.

Periodic review and expedited delisting of species when supported by verifiable scientific evidence.

Energy

The free market system is the most appropriate means of attaining energy conservation and production goals. Increased conservation and domestic expansion and development of existing and new energy sources are essential to our nation's security and economic prosperity.

We support continued efforts by the Federal government to remove regulatory impediments to the

discovery, production, transportation, and sale of energy resources.

We support the Federal government's role in contingency planning for severe energy supply disruptions.

We support the role of the Federal government in joining with private enterprise to reach and develop alternative energy sources.

We support the concept of positive incentives for conservation activities such as energy tax credits. We support increased emphasis on energy efficient technology by the building industry.

We believe that in order to maintain a healthy diversity in the economy the federal government should be particularly sensitive to the over-regulation of our country's natural resources. The government should implement programs that will provide our nation with the natural resources needed to create affordable housing.

We support the State of Utah's involvement in the development and application of natural resource reclamation laws. Further, regulators are encouraged to examine and accommodate local diversity when developing federal guidelines. In addition, financial assurance should be guaranteed in an effort to make certain that reclamation of land is completed.

Growth Issues

We recognize that growth is an issue facing many areas of our country. We believe that growth should be encouraged as it is a stimulus to the economy, increases the tax base, provides places to live and work, and offers opportunities that would not otherwise exist.

We also realize the responsibility we have to educate and work with local, state, and federal government officials in developing responsible growth planning that is equitable and which considers the divergent needs of transportation, housing, agriculture, commercial, industrial, and environmental concerns. Government growth planning activities must take into account property rights in the manner described in the NAR Statement of Policy on Property Rights.

Indoor Air Quality

We believe that all Americans are entitled to enjoy an indoor living environment where risks to health and welfare from pollution are minimized. Increased efforts by both the private and public sectors should be encouraged to characterize and evaluate the extent of indoor air quality problems and to encourage the development of meaningful and affordable monitoring and mitigation strategies.

We support federal indoor air quality research and information dissemination.

We support both efforts to educate homeowners as to their responsibility to identify and disclose to real estate brokers or agents any known environmental hazards presenting a significant risk to health; and efforts by the Utah Association of REALTORS® to determine the desirability of disclosure language in listings and contracts of sale.

We urge all Americans who are in areas identified with high levels of radon to test their homes to determine if elevated levels of radon gas are present. We support increased education of homeowners so that they will become aware of potential radon problems and of their responsibility to disclose to real estate brokers or agents indoor air problems that present a significant risk to health. We oppose nationwide mandatory radon testing at the time of transfer of real property.

Any regulation of asbestos in buildings should be based on scientifically-proven significant levels of exposure and hazard to the public. Such regulation should allow reasonable time periods in which to comply with regulations, provide flexibility in how to comply, require comprehensive training and certification for asbestos abatement contractors and laboratory technicians, and provide for a "prioritization" of regulation with respect to the particular hazard posed by certain building types and classes.

Land Use

We believe in the fundamental right of all private property owners to determine the highest and best use of their land, working through appropriate governmental entities.

Programs of resource, land and historic preservation designed to protect aquifers, agricultural lands, wetlands, scenic vistas, natural areas, historic properties and open space, may have a positive effect on the quality of life and environment in towns, counties, and municipalities. Land use laws and regulations enacted for the purpose of protecting and enhancing these resources provide benefits to the general public and the costs should thus be borne by the general public. (See Property Rights section.)

The State of Utah and the federal government should minimize their involvement in land use decisions and not withhold government grants and programs to enforce their policies.

Planning for the classification and use of land must adequately consider the needs of housing, agricultural, commercial and industrial growth, as well as quality of life and a healthy local economy. Land use planning should also take into account the impact of planning on housing affordability.

We shall continue to develop programs and seek legislation to help the UAR and its member local boards achieve these objectives.

Lead Based Paint

Lead should be viewed as a public health issue. We support increased education of all homeowners about lead so that they will become aware of, and motivated to test for, potential health hazards. Legislative and administrative efforts should be directed at the general public, rather than focused on the real estate transaction and we strongly oppose any form of mandatory testing tied to the real estate transaction process. We support efforts to identify and reduce the potential health threat that the presence of lead may pose.

The Utah Association of REALTORS® supports inclusion of the following in legislation addressing residential lead-based paint hazards:

Single-family and multi-family sales of homes built prior to 1978:

A. Seller disclosure.

Before entering into the sales contract, it is the responsibility of the seller to:

1. provide a lead hazard information pamphlet;
2. disclose any known lead paint or lead hazard in the premises, as well as, any lead inspection report of which the seller is aware.

Each sales contract must include a lead warning statement and a statement signed by the purchaser

acknowledging that he/she has:

1. read and understood the lead warning statement in the contract;
2. received a lead hazard information pamphlet from the seller.

Premises may be tested only if mutually agreed upon by the parties. Placing the lead hazard warning and signature on a separate sheet is unnecessary, but the relevant section in the contract should be signed by the purchaser.

B. Leasing of Single and Multi-Family Properties:

The Utah Association of REALTORS® strongly opposes any form of mandatory testing tied to the real estate transaction process. A decision to test or not test should be left to the discretion of the lessor and potential lessee depending upon the circumstances in all cases lessee would have to provide lessor with a copy of the test results. The UAR would not oppose legislation which included the following:

Lessors shall notify existing residential tenants of potential lead hazards on a property by providing them with a lead hazard information pamphlet. Lessor could choose to test, lessee could waive having testing done and assume the risk of remaining in the premises, or lessee could test at their own expense. If a lessee was concerned about lead hazards being present and the property either had not been tested or had been tested and was not certified as lead-safe, they could terminate the lease within a reasonable period of time. If the lessor complies with the above requirements, they would be considered relieved from liability.

Lessor shall provide all potential lessees with a lead hazard information pamphlet for properties constructed before 1978. In addition, every lease for a residential dwelling constructed before 1978 shall contain standardized lead hazard disclosure and warning language. The lessor and lessee would have three options available to them:

Lessee could waive any opportunity to have the premises tested;

Lessor could agree to test the premises at his expense; or,

Lessor could refuse to test the premises. In such cases, lessee could have the lead test done at their own expense. Lessee would retain the right to rescind a lease if the test results were positive. In all cases, lessee would have to provide lessor with a copy of the test results.

C. General concepts to be included in any lead legislation passed by Congress:

1. Recognizing that lead hazards are a national health issue and not a housing issue, in the event the United States Congress passes a law relative to mandatory blood testing for lead, the Utah Association of REALTORS® would then support the position that sellers or lessors retain the option of requiring purchasers or lessees to provide copies of the latest blood test results of any children who are to occupy a property prior to its sale or lease.
2. The UAR supports the goal of assuring that residential properties be made "lead-safe" rather than "lead-free".

3. The UAR supports the "innocent owner" concept, to encourage owners to take voluntary action to eliminate lead hazards. The legal liability of the owner should be limited to the reduction of any lead hazard to a "lead-safe" level.

4. The UAR supports the addition of language to the bill limiting the liability of sellers and lessors who comply with the bill's provisions. We support the addition of the following language: "A seller or lessor of residential property and/or their agent shall have no liability under this Act or any other provision of federal, state, local or common law for any lead-related injury to any person resulting from occupancy of the premises sold or leased if the seller or lessor has complied with the requirements of this Act."

Absent the addition of such a liability limiting provision, the UAR would support amendments to federal, state and local Fair Housing laws to allow sellers or lessors to refuse to rent to families with children in cases where there are known lead hazards on a property which would place the child's health at risk.

5. The UAR supports federal financial incentives and relief to encourage the abatement and/or encapsulation of lead hazards in residential premises.

6. The UAR opposes making lead hazard testing a pre-requisite for qualifying for any federally backed mortgage insurance or guarantee under FHA, Farmers Home Administration, Veterans Administration or any other governmental or quasi-governmental entity.

7. The UAR supports the inclusion of legislative language prohibiting lending and insurance institutions from refusing to lend or grant liability insurance on properties solely because they may contain potential lead hazards.

Property Rights

Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and 14th Amendments of the United States Constitution.

We support legislative implementation of the 5th Amendment's guarantee of compensation when property rights are taken. Every person should have the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action at any level without just compensation or the owner's express consent.

We recognize the need for all levels of government to be able to exercise legitimate police powers in the regulation of private property to protect the health, safety and general welfare of its citizens. However, when government actions or regulations are not founded within legitimate police powers, the government should be required to pay compensation for the inordinate burden levied on the property owner.

In addition, we support legislation that provides property owners with expeditious access to administrative and judicial systems at all levels - local, state and federal - to pursue Fifth Amendment takings claims or relief from other property rights violations.

Wetlands

Recognizing the environmental significance of wetlands, we believe that any wetland legislation should include language to provide for:

A standardized definition for identification of wetlands which includes hydrophilic vegetation, hydric soils and hydrology, and which results in a program that focuses on important wetlands habitats;

A clearly defined permitting process which should improve the efficiency of the program, provide binding time limits for the agencies, and provide a guaranteed right of administrative appeal in order to reduce costly, unnecessary and contentious litigation;

A program which recognizes that all wetlands are not the same and classifies wetlands by their functions and values; the strictness of the regulatory requirements should be tailored to reflect the varying importance of these qualities;

The requirement that all authorities with wetlands regulatory powers notify affected property owners whenever wetlands inventories are to be conducted in the State of Utah;

The use of wetlands mitigation banking as a tool to both reduce the cost of compliance with mitigation requirements and to increase the effectiveness and environmental benefits associated with permitted mitigation activities;

A "single contact" wetlands regulation process which would eliminate the duplicity of dealing with multiple regulatory agencies.

HOUSING

Condominiums and Cooperatives

Condominium and cooperative forms of ownership are legitimate shelter resources providing important, economically attractive options for consumers.

*To further the goal of making this affordable form of homeownership more available there is a need for the government agencies involved with condominium and cooperative financing to continue to streamline and update their policies.

*We oppose all unreasonably restrictive requirements regarding the conversion of rental housing units into condominium and cooperative forms of homeownership.

*We propose as a guide for state legislation the use of the Uniform Condominium Act and similar acts for cooperatives and the NATIONAL ASSOCIATION OF REALTOR® Condominium Legislation Recommended Criteria, utilizing each as best applicable for the individual state.

*We believe that the Uniform Common Interest Ownership Act should not be adopted by the Utah Legislature because there is no need to extend such a broad regulating process to every type of planned community.

*In order to avoid large special assessments of unit owners for unanticipated expenses and to protect condominium and homeowner associations' board of directors liability for a possible breach of their fiduciary responsibility to the association, we call on all condominium and homeowner associations to establish and sustain an adequate reserve account policy for capital and contingency items. We recommend the following actions be taken in implementing such a policy.

*To establish an adequate reserves policy each association should prepare, and disclose to each unit owner, a pro forma operating budget, projecting the estimated revenues, expenses, reserves for replacement of capital assets and contingency reserves, and identifying the estimated life and replacement costs of all capital assets.

*The pro forma budget, including reserves, should be prepared or reviewed by an independent professional third party.

*In establishing the initial budget by the developer, special caution should be taken to accurately estimate potential operating costs and long-term assets.

Equal Opportunity

We subscribe to the policy of fair housing; we believe that equal opportunity in housing can best be achieved through continued leadership, observance of law, education and mutual cooperation of the real estate industry and the public through a free and open housing market. The Federal Fair Housing Law and the Utah Fair Housing Act provide for the right of all people to freely choose where they will live without regard to race, color, religion, sex, disability, familial status, national origin or source of income.

We believe the Congress should act promptly to make it clear that national policy as set forth in the Federal Fair Housing Law mandates free housing choice. The NATIONAL ASSOCIATION OF REALTORS®' Code of Equal Opportunity is the REALTORS®' affirmative pledge to offer equal service to all persons without regard to race, color, religion, sex, handicap, familial status or national origin.

We urge Congress to define the purpose of the Federal Fair Housing Law promptly so as to make it clear that the law mandates free choice in housing as opposed to systems of quotas or allocations.

We oppose all restrictive laws or ordinances that inhibit the free and open market for real property, such as "For Sale" sign bans, and anti-solicitation laws.

We fully accept our responsibility to make all people aware of the obligations and advantages of a strict compliance with the spirit as well as the letter of the Federal Fair Housing Laws.

Housing for Low- and Moderate-Income Occupants

We encourage continued examination of the level and types of efforts within the public and private sector that are currently being utilized or contemplated to respond to the needs of the low- and moderate-income housing occupants.

We encourage the use of existing housing inventory in providing low- to moderate-income housing.

We believe that housing for low- and moderate-income rental occupants is best managed by the private sector.

While supporting the use of incentives to encourage property owners wishing to prepay their federally assisted loans to retain their units as low- and moderate-income housing, we oppose the enactment of state legislation that imposes disincentives to the prepayment of federally-assisted loans issued under the Section 221(d)(3) and 236 programs of the National Housing Act which exceed the controls implemented by federal legislation on those programs.

Housing for the Elderly and Handicapped

We acknowledge actions taken by all levels of government to reduce impediments to handicapped and elderly persons in the acquisition of housing and urge REALTORS® to continue providing guidance for needed, cost-effective solutions to their housing needs.

Psychologically Impacted Properties

We support legislation to declare that all psychological impacts or stigmas which are associated with past owners or occupants of real property are not material facts and need not be disclosed to a potential purchaser or lessee.

Rental Housing

We recognize the need in this nation to produce new affordable rental housing and preserve the current rental housing stock through recycling and renovation. We call on all levels of government to meet this demand by removing disincentives to the financing, production and improvement of rental housing for citizens of all income levels.

* Local moratoria on converting rental property to condominiums or cooperatives, costly and administratively burdensome regulations and restrictions are all examples of disincentives to initial investment in rental projects.

Owners of rental property should provide safe and decent housing for the needs of their rental occupants; rental occupants must recognize and accept their legal responsibility to maintain and care for the property and safety of their fellow occupants. The rights given each party under basic contract law should be enforced.

We encourage and support legislation as well as legal measures to prevent landlord-tenant ordinances injurious to the basic rights of private property ownership.

Sign Ordinances

We believe that REALTORS® have the right to advertise properties on the open market through the use of solicitation generally and real estate "For Sale" signs specifically. We encourage REALTORS® to work with local government to assist them in determining a sign ordinance program that will allow REALTORS® to market their clients' properties.

Time Sharing

The State of Utah, rather than the Federal government, should regulate time sharing, which the State of Utah has done through the Timeshare and Camp Resort Act, which provides legal recognition of time sharing as a legitimate property interest and authorizes regulation through the Division of Real Estate in the best interests of both consumers and the industry.

*The major element of time sharing regulation should be disclosure requirements concerning such matters as status of title, association budgets and assessments, management, exchange programs, and sales inducements.

* Although many time sharing transactions are conducted interstate, the controlling legislation should be that of the state where the property is located.

* Recognizing that a degree of uniformity among applicable state laws is desirable, we recommend the Model Real Estate Time Share Act as a guide to the extent the State of Utah finds it feasible.

* Time sharing, as an interest in real property, should be supervised by the appropriate real estate regulatory body.

* Those engaged in selling time shares should hold state real estate licenses.

TAXATION

STATE AND LOCAL REAL ESTATE TAXATION

Assessment Practices

We support laws providing for tax assessment of all real property and all forms of shelter on an equitable basis based on fair market value.

Impact Fees

Fees for services should not hamper or deter development in our communities and should not be used to correct existing deficiencies. We urge that governments limit any use of such fees to providing public capital improvements necessitated by new developments.

Spending Limitation

We support the principle and concept of maintaining a balanced budget in all political jurisdictions. Balanced state, local, county and national budgets should be maintained by reducing unnecessary expenditures, sunseting, capping and/or reducing the growth of programs and services that are not essential.

Tax Exempt Properties

All tax exempt institutions, including but not limited to municipal, legitimate religious, charitable and educational organizations should be required to pay for local public services received, but should maintain their real property exemption due to their positive contributions to the communities in which they reside.

In those instances where tax exempt institutions occupy only a portion of larger land holdings, those sections of the properties not directly used by the institutions should be fully taxed. Many religious, cultural, educational, civic, fraternal institutions and the like maintain real estate holdings that do not have any direct relationship to the purpose for which the institution is established. Indeed, many such holdings are made for purely investment purposes, yet enjoy tax benefits at a cost to those who pay taxes. Such holdings should be fully taxed.

Tax Limitation/Reform

Property taxes may place an undue burden on the acquisition and ownership of real property. We support tax restructuring to reduce unreasonable reliance upon property taxes.

Transfer Tax

The ability to purchase real property contributes directly to Utah's economy. Transfer taxes place a

major burden of taxation on the buyers and sellers at the time of settlement and places an unreasonable burden on real property ownership and economic development. The UAR opposes the use of transfer taxes at all levels of government.

RISK REDUCTION

To promote professionalism and better serve the buying and selling public, we support programs to reduce the legal liability of REALTOR® and REALTOR-ASSOCIATE®s. These programs include comprehensive legal education, alternatives to civil litigation to resolve disputes, and reasonably priced errors and omissions insurance for brokers and salespersons. We further encourage our individual members and local boards to create risk reduction committees to promote these objectives.

REGULATORY ISSUES

BUSINESS PRACTICES

Agency Practices

The Utah Association of REALTORS® recognizes seller agency, buyer agency, and limited agency with informed consent, as appropriate forms of consumer representation in real estate transactions. The Association represents the need for all REALTORS® to be able to make individual business decisions about their companies' agency practices. Furthermore, the UAR endorses freedom of choice and informed consent for consumers of real estate services when creating agency relationships with real estate licensees.

Appraisal Standards

We have adopted the following positions on appraisal standards:

- *To support licensing and certification of appraisers.
- * To support the minimum appraisal work product standards promulgated from time to time by the Standards Board of the Appraisal Foundation, and promote industry and government acceptance of such standards.
- * To take a position that real estate work product standards will be established by The Appraisal Standards Board of the Appraisal Foundation.
- * That the Federal government take no action regarding the regulation or certification of appraisers that would deprive a state or territory of the exclusive prerogative as to licensing, registering or certifying appraisers.
- * To endorse the system of state licensing and certification of real estate appraisers, recognizing Utah's right to fashion the legislation as it deems appropriate.

Business Mobility

The expansion, relocation and/or continuation of business activity should remain a decision of business management based on economic considerations and not be restricted by government for political reasons.

We oppose legislation and/or policies that would mandate that business and manufacturing concerns

report in advance to government agencies and labor unions any future plans to relocate or close their facilities. Such a requirement holds the potential for intimidating management with threats of costly delays and retribution to affected employees and communities, would create competitive disadvantages, adversely affect productivity and increase consumer costs.

Consumer Protection

We urge REALTORS® and all other participants in real estate transactions to maintain and improve upon their efforts to serve and protect the consuming public.

* We support efforts to stop government intervention which can increase the cost of consumer borrowing, place restrictions on services provided by industry and cause unwarranted delay of transactions such as the Real Estate Settlement Procedures Act (RESPA) and the Truth-in-Lending Act (TIL) without harming the overall goal of adequate and responsible consumer protection.

State Ownership and Leasing of Public Buildings

We are concerned about attempts to shift into the hands of the State of Utah and local governments a greater portion of the essentially commercial function of providing facilities and space for government activities. We are opposed to proposals which would require the State of Utah and local governments to increase the amount of government owned space by embarking upon a major public building construction or acquisition program. An increase in the number of government owned, tax exempt facilities would reduce the tax base of local governments, raise the real cost of providing government space to the taxpayers, unnecessarily disrupt a major traditional function performed by the private sector, and would impede efforts to restrain the growth of government spending.

Government Intervention, Regulation and Control

We support broad regulatory reform such as that pursued by Congress in recent years and the concept of greater accountability of agency rule makers to elected officials. Further, we endorse the need to shift the burden of proof in justifying agency regulations toward the agency.

Group Investment in Real Estate

Group investment in real estate enhances the strength of Utah's economy. Such investment contributes to Utah's goals, provides funds for commercial, single family, multifamily and industrial facilities, and encourages the productive use of capital. In recognition of these contributions to Utah's economy the State of Utah, and its regulatory and taxation agencies, should not reduce but encourage the efficient incentives for real estate group investments and should not impede the formation of these investment opportunities to people who otherwise could not participate in such investments.

We support the principle of full and understandable disclosures for real estate group investments to enable potential investors to make informed investment decisions.

Regulatory trends requiring an ever increasing amount of information in the registration process have merely confused and intimidated the investor with a large volume of complex information. In light of capital formation needs and the increasing expense of registration, we urge the Congress and the Securities and Exchange Commission (SEC) and the State of Utah to provide the small REALTOR® organizers of small investment groups with realistic alternatives such as expanded private offering exemptions.

We encourage continued cooperation and coordination between the various regulatory agencies and the Utah Legislature leading to the development and adoption at the federal and state levels of model legislation to bring about uniform and consistent regulation of real estate group investments.

Seller Property Condition Disclosure

We strongly encourage property condition disclosure by sellers of real property to potential purchasers.

Confiscation of Real Property

We are concerned that the rights of innocent real property owners be upheld in all cases of the forfeiture of real property for illegal activity. Innocent real property owners are those who had no knowledge of the use of their property for illegal activity or who, if they had such knowledge, made reasonable efforts to alleviate the use of their property for illegal activity. Any legislation addressing the forfeiture of real property because of illegal activity needs to contain language which protects the rights of innocent owners.

REAL ESTATE FINANCE

ALTERNATIVE MORTGAGE INSTRUMENTS

We strongly support the continued availability of the fixed-rate mortgage (FRM) which has been the hallmark of residential mortgage finance for the last 40 years. We further support the use of alternative mortgage instruments as options to the fixed rate loan. However, given the complexity of adjustable rate mortgages (ARMs), it is important that potential homebuyers fully understand all the features of an adjustable rate mortgage. Therefore, we strongly support and will continue to work with mortgage lenders, Congress and the appropriate regulatory bodies for the strengthening and enforcement of disclosure requirements.

Further, we advocate and will continue to work for the adoption of a single, uniform disclosure format to be utilized by all lenders.

Automated Underwriting, Credit, and Mortgage Scoring

Home ownership is the foundation of stable neighborhoods, good citizenship and secure communities. Innovations in the mortgage credit delivery system is central to increasing home ownership opportunities and assuring the consistent, cost effective availability of mortgage credit.

Automated underwriting, accompanied by credit and mortgage scoring, are significant innovations in the mortgage credit delivery system. These innovations are largely the result of risk management reengineering at the residential secondary mortgage corporations, Fannie Mae and Freddie Mac. These government-sponsored enterprises are currently indispensable to residential mortgage lending and their advocacy of risk management tools such as credit and mortgage scoring will profoundly affect nearly every residential mortgage lender. This influence even extends to the Federal Housing Administration.

The Utah Association of REALTORS® strongly supports the usage of technology to speed the mortgage finance transaction and expand opportunities for home ownership. We support the efficiencies, growth and innovations of the residential secondary mortgage markets. We strongly support the complementary role that the Federal Housing Administration plays in the mortgage finance system.

Ideally, automated underwriting and credit and mortgage scoring benefit all participants in the home

mortgage transaction. However, when lenders misuse these tools, the consumer is the one to suffer. The Utah Association of REALTORS® recognizes the heavy reliance lenders place on credit scoring to assess a customer's potential credit risk, and believes lenders' confidence in credit scores is misguided. The basis for Fair, Issac credit bureau (FICO) scores, as related to mortgage finance, is flawed because the integrity of the data contained in the score is highly questionable; the components of the score do not include some elements that are fundamental to the mortgage lending process, e.g., capacity to repay the loan and collateral; and the time required to correct errors in credit scores is much too long. Additionally, a credit score does not reflect accurately the behavior of potential home ownership groups who could be good mortgage lending risks.

The Utah Association of REALTORS® strongly opposes the use of FICO scores as the sole determinant of mortgage finance eligibility. Instead we strongly advocate using mortgage scoring in association with automated underwriting. Further, in accordance with the guidelines provided by Fannie Mae and Freddie Mac, lenders should use credit scores as a tool together with other underwriting criteria, and make a practice of having experienced underwriters process the more problematic loan applications in order to ensure that consumers receive fair, fast, and cost-effective mortgage finance decisions.

Fannie Mae and Freddie Mac should act affirmatively to prevent pre-screening of mortgage loan applicants by FICO scores alone, rather than using a mortgage score.

The Utah Association of REALTORS® should take a highly visible role to alert and protect consumers' credit scores. Public statements, counseling and other consumer and lender educational efforts should be employed to assure that consumers are aware of credit and mortgage scoring, the need for good individual credit management as a significant attribute for future home ownership and securing mortgage credit.

Financial Entities' Involvement in Real Estate

We strongly oppose the authority of all financial entities which benefit from federal deposit insurance, favorable tax treatment, and special access to credit (including their subsidiaries and divisions) to participate in the business of real estate brokerage, fee appraising, leasing, real estate development, real estate syndication, property management and other real estate services and/or activities not directly related to their primary function. Such activities may conflict with the interests of their customers, threaten the safety and financial stability of the institution, increase the risk of taxpayer liability and pose a threat to the competitive structure of the real estate industry. We are also opposed to long term holding of foreclosed property by financial entities.

We further urge the appropriate regulators to use their authority to restrain the expansion of real estate activity by the State of Utah's financial entities and its federal counterparts. Where third party real estate brokerage is allowed, those federally-insured financial institutions should be subject to the following standards and safeguards:

** Prohibit the use of the parent federally insured financial institution's name, trademark, logo, and any indication of affiliation in public advertising by the subsidiary.*

** Prohibit joint advertising between federally-insured financial institutions and related real estate brokerage firms.*

** Require federally insured financial institutions and real estate brokerage business operations to be conducted in separate geographic facilities.*

** Require complete separation between the federally insured financial institution and its operating subsidiaries. The subsidiaries should have separate management and staff, and should be independently operated.*

** Limit and regulate the amount of capital investment and working capital loans in real estate brokerage subsidiaries from parent federally insured financial institutions.*

** Limit and regulate investment and loans based on the "legitimate" net worth of the parent federally insured financial institutions.*

** Require full disclosure of potential conflict of interest in situations where affiliated federally insured financial institutions and real estate brokerage companies are involved in the same transactions, in order to prevent the provision of preferential treatment based on that affiliation.*

** Prohibit the use of public or private communications designed to create the impression that the subsidiary real estate brokerage company has priority access to the funds or credit of the parent federally insured financial institution, or is entitled to a preferential interest rate for real estate loans.*

** Prohibit the use of confidential credit information available from the parent federally insured financial institution for solicitation purposes by a real estate brokerage subsidiary.*

** Limit the percentage of loans made by federally insured financial institutions to clients of real estate brokerage subsidiaries.*

** Require approval of the appropriate regulatory bodies of federally insured financial institution investment in non-financial subsidiaries, such as real estate brokerage companies.*

** Require appropriate regulatory agencies to periodically review and audit the records and statements of federally insured financial institutions with subsidiaries to ensure and enforce compliance and protect against unsafe and un-sound practices.*

** Require strict enforcement of regulations and safeguards designed to prevent an anti-competitive environment.*

** Require imposition and implementation of stiff penalties for violation of regulations mentioned above.*

- Require real estate brokerage subsidiaries to comply with the real estate licensing laws and regulations of the appropriate real estate commission.*

As recently approved statutory and regulatory changes to the nation's financial services industry in the early 1990s are implemented, we anticipate an increasingly important need for structural reform. Historical laws governing the activities of insured depository institutions (i.e. Banking Holding Company Act, National Bank Act, Glass-Steagall act, Savings and Loan Holding Company Act) may be replaced by a more streamlined statutory organizational structure in which regulation of banking and non-banking activities will be based upon function.

Major factors driving reform in the marketplace include the need to: (1) restore competitiveness (lost through legal restrictions and technological advances) to our financial system; (2) enhance the flow of capital into investment and economic growth; and (3) avoid taxpayer exposure to further losses from the federal deposit insurance system.

We recognize that these changes have created new forms of business relationships or affiliations between insured depository institutions and real estate firms and that the business needs of REALTORS® whose firms are or may choose to be, affiliated with insured depository institutions under the ownership of a common parent may be adversely affected in the absence of structural change.

We accept a structural reform which creates new entities, provided that such structure prohibits insured depository institutions from engaging (directly or indirectly) in real estate activities. To that end, we support the establishment of two new structural entities--the Diversified Holding Company (DHC) and the Financial Services Holding Company (FSHC), as previously approved by the Board of Directors at the 1991 Mid-Year Legislative Meetings. DHCs would be permitted to own both: (1) uninsured and separately capitalized "non-banking" subsidiaries which are permitted to engage in diversified financial services, including real estate, insurance, securities and mortgage banking; and (2) a Financial Services Holding Company subsidiary which itself could own an insured depository institution subsidiary.

Any new structure must insulate (through the establishment of "firewalls") the activities of the FSHC and its insured depository institution subsidiary from the DHC and any of its non-banking affiliates. These would include, but not be limited to, the following:

** Disclosure. An insured depository institution subsidiary (or its subsidiary) of the FSHC must make a written disclosure to a real estate affiliate's customer that any product or program of the real estate affiliate is not federally insured and neither guaranteed by, nor an obligation of, the depository institution.*

** Joint and Cross-Marketing. An insured depository institution subsidiary (or its subsidiary) of the FSHC shall not cross-market or jointly reference its products and services with those of the real estate affiliate. This proscription includes joint advertising or other media disseminated to promote or solicit business.*

** Depository institutions and real estate affiliates are prohibited from either indicating or implying that any benefits could result from their affiliation.*

** Solicitation. An insured depository institution subsidiary of the FSHC can not, directly or indirectly, solicit real estate business for the real estate affiliate related to the provision of a commercial or real estate loan.*

** Preferential Treatment. An insured depository institution affiliate cannot, directly or indirectly, solicit real estate business for the real estate affiliate related to the provision of a commercial or real estate loan.*

** Non-Public Customer Information. An insured depository institution cannot, directly or indirectly, use non-public customer information to solicit real estate business without the prior written consent of the customer. Such written consent shall be clearly set forth and explained to the customer.*

** Market Separation. The insured depository institution subsidiary of the FSHC and the real estate affiliate shall be held out to the public as separate, and customers shall be sufficiently informed of the separate identities through separate names, separate business locations and separate logos and letterheads.*

** Legal Separation. An insured depository institution subsidiary of the FSHC shall be legally separate from the real estate affiliate i.e., it shall be incorporated as a separate company, operated as a separate business unit, and organized with its own separate board of directors and management.*

* *Financial Separation.* An insured depository institution subsidiary of the FSHC shall be financially separate from the real estate affiliate. Each shall be adequately and separately funded with no commingling of assets. Additionally, an insured depository institution subsidiary is restricted to the percentage limits established in Section 23A of the Federal Reserve Act for purposes of loans or extensions of credit to its affiliates (including real estate affiliates) and the transfer of assets between it and its affiliates (including real estate affiliates).

Mortgage Credit Availability

Thrift institutions have long been a primary source of residential mortgage loans. However, past deregulatory measures adopted by Congress have had the effect of diminishing the role of the thrift industry as providers of mortgage credit. We support policies that allow thrifts to maintain mortgage lending as their primary business activity. As revisions to the thrift charter are adopted, nothing should mandate that savings and loan institutions should be forced to abandon housing finance as a principal line of business. At the same time, we recognize the need to develop new sources of mortgage finance to meet future housing needs. To that end, we support the following:

* *Legislative and regulatory proposals which encourage pension fund investment in mortgages, while maintaining current "arms length" standards contained in the Employee Retirement Income Security Act (ERISA) regulations.*

* *Continued development of highly marketable mortgage backed securities designed to attract new investment in housing from non-traditional sources, including, but not limited to Real Estate Mortgage Investment Conduits (REMICs), as vehicles to improve the ability of mortgage backed securities to compete in the marketplace, should be adopted. The Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), as major participants in the secondary mortgage market, should be authorized to issue these securities.*

* *The Federal Home Loan Bank System is traditionally an important source of medium- and long-term funds to member institutions that facilitate residential mortgage lending. We support modernizing the structure and membership criteria provided that the System's focus on providing support and facilitating residential mortgage lending continues as a principal mission objective.*

* *Availability of commercial debt and equity capital. Specifically, we support the development and maintenance of a liquid commercial secondary mortgage market. We support the creation of a legislative, regulatory and technical environment favorable to the development and maintenance of this market.*

Secondary Mortgage Market Institutions

The secondary mortgage market has become increasingly important to the development of mortgage capital in the marketplace. We continue to strongly oppose any attempts to fully privatize or weaken the authority and efficiency of the existing secondary mortgage market institutions, Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC).

POSITIONS ON OTHER CURRENT ISSUES

Community Revitalization

One of the nation's most challenging opportunities in housing lies in the recovery and rehabilitation of declining neighborhoods. To that end, we support efforts by the State of Utah, and local governments

therein, to implement enterprise zone programs as viable frameworks to foster community revitalization and economic growth. REALTORS® hold the greatest potential for initiating and coordinating the resources and methods for restoration of neighborhood housing and commerce.

The UAR urges its local boards and individual members to actively participate in and promote community revitalization efforts that are designed to maintain and improve the quality of life in the neighborhoods of our cities, towns and communities. We applaud the action of communities that have implemented community revitalization programs without government assistance and continue to encourage the involvement of the private sector to take advantage of the present investment possibilities.

Community Service

In order to promote meaningful public service programs to upgrade the quality of life in their communities, we support REALTOR® Community Service programs to involve local boards of REALTORS® and the UAR.

To that end, the UAR has formed the Utah Association of REALTORS® Housing Opportunities Fund (UARHOF)—which is funded with the interest generated from broker trust accounts and charitable contributions—to enhance the ability of Utah citizens to secure housing.

We support the concept of legislative proposals to establish programs that encourage community service, provided that such programs includes provisions which limit its cost and allow participants to use any financial incentives offered under such a program for down payments, closing costs, or other costs associated with purchasing a home.

Education and Research

We recognize the vital necessity of professional competency to meet the challenges of real estate practice in an increasingly sophisticated and complex society.

Professionalism in real estate through education and training is one of the primary objectives of the Utah Association of REALTORS®. We recognize our responsibility to the members of the Association to assist:

*REALTORS® and REALTOR® ASSOCIATES® in identifying and obtaining opportunities for real estate education and training;

*Affiliates of the Utah Association of REALTORS® in their educational activities, each within its specialization and in mutually beneficial co-operative ventures;

* Local boards in their offering of educational, training and research programs and in the formation of centers for real estate research;

* Universities and colleges in the offering of their curricula of real estate courses and research in the general field of real estate;

*The State of Utah in adopting and implementing specific requirements for continuing education.

We endorse reciprocal education and license renewal credits among:

* State REALTOR® Institutes;

- * The Societies, Institutes and Councils of the NATIONAL ASSOCIATION OF REALTORS®; and,
- State licensing authorities.

We recognize our need to share our knowledge with the general public and our responsibility to our members through the development and dissemination of timely real estate programs which relate member services to the needs of clients and customers.

General Statement of Housing Policy

As an Association, we reaffirm the national goal of "a decent home and a suitable living environment for every family." This commitment, which also needs to be raised to the highest level of national priorities, encompasses the entire housing ladder from the homeless to the first-time homebuyer. We, the Utah Association of REALTORS®, recognize the housing needs that are present among low-income households and renters and we also recognize that these are the very families who will eventually become homeowners. We strongly endorse the reliance on local and state initiatives and public private partnerships that are such a crucial part of the Report of the National Housing Task Force.

Independent Contractor Relationship

We support independent contractor requirements with respect to worker's compensation and unemployment insurance that do not conflict with federal and state law.

International Real Estate and Foreign Investment

The market for real property and real estate finance has been and is increasingly international. Recognition of the fundamental benefits of private property ownership continues to expand worldwide. As a consequence, the effects of international events upon continued growth and stability in our industry and country are critical.

We believe that the same basic principles that we espouse nationally, which are support for private ownership and the free enterprise system, have worldwide application. We should vigorously press private property philosophies in the international community and take a highly visible leadership role in the development of a collective private sector position on international housing and development issues.

We support the right of foreign investors to acquire U.S. real property and the right of U.S. investors to acquire property abroad. We oppose laws and regulations that in any way hinder those rights. We also support the free flow of international finance for real estate and oppose any laws and regulations that impede that flow.

We believe that foreign investors in U.S. real estate should be subject to the same rates of taxation as U.S. investors. As far as is practically possible, systems for taxing foreign investors should be no more onerous than those applied to U.S. investors. In addition, any unique reporting and disclosure requirements on foreign investors and/or their agents should be kept to a minimum.

License Law

To promote increased competency in the industry, we urge that:

- * Specific educational requirements be a pre-requisite for licensing and specific continuing education

requirements be a condition for license renewal.

* The Division of Real Estate be empowered with adequate statutes to provide the opportunity for redress to the public.

* Reciprocity of licensing between states be encouraged where it is mutually advantageous.

*The UAR and its member local boards strive to improve the State of Utah's license laws and, when appropriate, recommend the use of the NATIONAL ASSOCIATION OF REALTORS® Suggested Pattern Real Estate License Law.

* License laws should address developments in the industry such as the management of condominium, co-operative, and homeowner's associations and that questions regarding these new developments should be added to the testing process. As these are real estate activities, they should require a license and supervision under Utah's existing real estate licensing laws.

* The UAR supports laws or regulations requiring auctioneers, who auction real property, to be licensed with the Division of Real Estate under Title 61 of the Utah Code or perform real estate auction sales in conjunction.