

# Country Guide

## USA – Utah

Prepared by

Ray Quinney & Nebeker P.C.



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LEGAL GUIDE  
TO DOING  
BUSINESS IN

—

# UTAH



RAY QUINNEY & NEBEKER  
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*Prepared by the attorneys of  
Ray Quinney & Nebeker P.C.*



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# DOING BUSINESS IN UTAH

## INTRODUCTION

Ray Quinney & Nebeker P.C. is Utah's exclusive member firm of Lex Mundi, the world's leading network of independent law firms. Comprised of member firms in over 100 countries, Lex Mundi membership is the mark of excellence for legal services around the world. Our firm's membership in Lex Mundi provides us with global reach and access to legal resources that enhance our ability to serve our clients' needs around the world ([www.lexmundi.com](http://www.lexmundi.com)).

This Guide to Doing Business in Utah was prepared by Ray Quinney & Nebeker, a Lex Mundi member firm, to provide general information on topics related to business, living and legal issues in Utah.



## RAY QUINNEY & NEBEKER P.C.

Ray Quinney & Nebeker is a leading, full-service law firm, established in 1940. Our Firm has a long and vibrant history in Salt Lake City, and is widely known for its tradition of unity and stability. Ray Quinney & Nebeker distinguishes itself by its longevity, quality of client service, and loyalty in professional and personal relationships between clients and employees.

Ray Quinney & Nebeker is recognized as one of the 'preeminent' law firms in the United States. We provide comprehensive legal services to individual and corporate clients in many industries and locations through our offices in Salt Lake City and Provo, Utah.

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Contact Justin Toth for more information on this Guide to Doing Business in Utah.

**NOTICE:** The material contained in this Guide is for information purposes only. It is intended to provide basic information concerning issues of general interest and should not be construed to be legal opinion.

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## **BACKGROUND INFORMATION – UTAH**

### **OVERVIEW**

Over 1,000 years ago, Utah was a land of majestic mountains, lakes, and deserts inhabited by early civilizations, including the Anasazi and Fremont. Roughly 1,000 years ago, hunter-gatherer tribes of Shoshones, Utes, South Paiutes, and Goshutes moved into Utah, and were later joined by the Navajos. The first appearance of Europeans occurred in 1776 as a group of Spanish explorers, led by Franciscan friars Dominguez and Escalante, scouted a northern route from Santa Fe to Monterey. Nearly fifty years later, mountain men in search of beaver pelts explored Utah’s unique geographical features. In 1847, members of the Church of Jesus Christ of Latter-day Saints, the “Mormons,” seeking a religious sanctuary in the remote West, settled in Utah. Utah achieved U.S. territorial status in 1850 and became the 45th state in 1896 with a population of a quarter of a million people. In the early twentieth century, mining, railroads, and other industries brought thousands of new immigrants to Utah, diversifying the population. Defense, mining, steel and oil refining, tourism, recreation, light manufacturing, and service industries drove the economy after WWII. During the past decade, Utah has continued to experience tremendous growth. Construction, technology, and life sciences represent a few of Utah’s fastest growing industries. Tourism and recreation remain strong, due in part to the successful hosting of the 2002 Olympic Winter Games and the popularity of multiple national parks and monuments located within the state.

### **POPULATION**

2017 estimates put Utah’s population at 3,101,833. This represents a 1.9 percent increase, or 337,948 new residents, since the 2010 census. According to the U.S. Census Bureau, Utah is the third fastest-growing state in the country, and is projected to grow at the same rate through 2018. Even though Utah’s rate of natural increase (births minus deaths) decreased from 2016, it is still the highest in the country. Utah remains the youngest state in the nation, with a median age of 30.7, due in part to nearly 30 percent of Utahns being under the age of 18. Net-in migration in 2017 accounted for 46% of the population growth.

### **CULTURAL/ETHNIC BACKGROUND**

#### **CULTURE AND UTAH DIVERSITY**

Utah continues to grow more racially and ethnically diverse, especially in its largest cities. In fact, minority groups in Utah have grown by nearly 130,000 people since 2010. That translates to one in five Utahns, or 21.5 percent, being a member of a minority group. The Utah Hispanic or Latino population increased by 21.2 percent in the past eight years, while Asian and Pacific Islanders increased by 37.7 percent and 23.6 percent respectively, and African Americans increased by 29.5 percent. Utah continues to welcome refugees from around the world. There are multiple organizations and agencies with resources for people of every ethnicity, gender, religion, or philosophical persuasion.

*Sources: U.S. Census Bureau, Salt Lake Chamber of Commerce, Kem Gardner Policy Institute, Governor’s Office of Management and Budget*

### **LABOR MARKET**

Utah has a history of above-average employment, low average wages, and workers who are younger and more educated than the national average. Companies looking to expand or relocate find these three factors very compelling.



As of May 2018, the national job growth rate was 1.6 percent annually. Job growth in Utah was 3.5 percent. That equates to 45,500 new jobs in the past twelve months. The national unemployment rate was 3.8 percent, compared to 3.0 percent unemployment in Utah. Utah ranked number one in the nation for total job growth and private sector job growth. Numbers indicate that Utah businesses are performing well, with nine of the ten private sector industry groups measuring net job increases, and only Resources and Mining losing jobs. Nonfarm payroll employment increased in eleven of the past twelve months.

Utah's labor force participation rate remains one of the highest in the country at 69.3 percent. This can be explained by several factors. First, jobs are readily available in Utah. In addition, because of Utah's young population, teenagers and young adults are more likely to work than their national counterparts. At the same time, the relatively small older Utahn population, those aged 55 and over, are also more likely to work than in the rest of the country.

*Sources: Utah Department of Workforce Services, U.S. Department of Labor Bureau of Labor Statistics, 2018 Economic Report to the Governor*

## **INVESTMENT CLIMATE/BUSINESS INCENTIVES**

Businesses locating or expanding in Utah may be eligible for state and/or municipal incentives.

### **STATE OF UTAH INCENTIVES**

#### **ECONOMIC DEVELOPMENT TAX INCREMENT FINANCING TAX CREDIT (EDTIF)**

Available to companies seeking relocation and expansion in Utah, the EDTIF tax credit is a post-performance, refundable tax credit rebate for up to 30 percent of new state revenues (sales, corporate, and withholding taxes paid to the state) over the life of a project, typically five to ten years. Qualifying companies that create at least 50 new high-paying jobs in urban counties, generate new tax revenues, significant capital investment or purchase from Utah vendors or suppliers, may be eligible.

#### **INDUSTRIAL ASSISTANCE FUND (IAF)**

IAF is a post-performance grant for the creation of high-paying jobs in the state. Companies are required to obtain commitment from local government to provide local incentives, create at least 50 new high-paying jobs and at least 110% of county average annual wages, and demonstrate stability, profitability, and competition with other locations.

#### **UTAH NEW MARKET TAX CREDIT**

In 2014, the Utah State Legislature enacted the Utah Small Business Jobs Act to attract investment in severely distressed areas of the state. This program, used by the federal government and twelve other states, is an effective tool to attract private capital investment in areas in need of job growth and economic development.

#### **LIFE SCIENCE AND TECHNOLOGY TAX CREDITS**

The Utah State Legislature amended the Technology and Life Science Economic Development Act in 2016 to set aside \$300,000 of funds for this incentive program. The Governor's Office of Economic Development (GOED) has authority to issue tax credits to qualifying life science and technology investors. It is a post-performance nonrefundable tax credit for up to 35 percent of the investment over three years, not to exceed \$350,000 in any year.

## **RESEARCH AND DEVELOPMENT TAX CREDIT**

A non-refundable tax credit is allowed for certain Utah research expenses. The credit is 5 percent of qualified research expenses that exceed a base amount, 5 percent of payments made to a qualified organization, and 7.5 percent of qualified research expenses for the current taxable year.

## **SALES AND USE TAX EXEMPTIONS ON MANUFACTURING EQUIPMENT**

Manufacturers (SIC 2000-3999) are exempt from sales and use tax on the lease or purchase of new equipment or replacement parts.

## **ALTERNATIVE ENERGY DEVELOPMENT TAX CREDIT**

Effective May 1, 2018, energy entities that plan to produce at least two megawatts of electricity, or 1,000 barrels per day if the project is a crude oil equivalent production, or 250 barrels per day if the project is a biomass energy fuel production, may apply to receive a tax credit for the lesser of either the economic life of the alternative energy project or 20 years. The tax credit is equal to 75 percent of the new state revenues generated by the alternative energy project.

## **CUSTOM FIT TRAINING**

Custom Fit Training is a partnership between the Utah System of Technical Colleges, Salt Lake Community College, and select institutions across the state, and the local business community. It is designed to provide customized employee training at an affordable cost. The Utah State Legislature appropriates funds each year.

## **OPPORTUNITY ZONES**

New this year, Utah designated 46 zones from a pool of low-income census tracts to be eligible for new tax incentives to attract long-term development in areas that lack infrastructure and jobs.

## **UTAH FILM COMMISSION**

### **MOTION PICTURE INCENTIVE PROGRAM**

This program provides a 20 or 25 percent post-performance incentive to projects that will spend a minimum of \$500,000 in Utah. Applications must be completed and accepted prior to the start of principal photography.

### **COMMUNITY FILM INCENTIVE PROGRAM**

A 20 percent post-performance incentive is available to projects that spend between \$20,000 and \$500,000 in Utah. Applications must be completed and accepted prior to the start of principal photography and 85 percent of the cast and crew must be Utah residents.

## **RURAL BUSINESS PROGRAMS AND INCENTIVES**

### **RURAL ECONOMIC DEVELOPMENT INITIATIVE (REDI)**

New in 2018, the REDI program authorizes a rural employment expansion grant for the creation of new high paying jobs in certain classes of Utah counties. The approved business entity must demonstrate that “new full-time employee positions” pay at least 125 percent of the average county wage, are filled by an employee that works at least 30 hours per week for a period of at least twelve consecutive months, and cannot be filled by an immediate family member. A business entity may qualify for up to \$25,000 in rural employment grants in any fiscal year.



## **BUSINESS EXPANSION AND RETENTION (BEAR)**

This post-performance program is designed to assist in growing new and existing rural businesses, influence rural job creation, and increase economic diversity in rural areas by enhancing technical services provided.

## **RURAL FAST TRACK (RFT)**

RFT is a post-performance grant available to small companies in rural Utah. It provides an efficient way for small Utah companies to receive incentives for creating high paying jobs and to promote business and economic development. Companies must have been in business for at least two full years, have at least two full-time employees, and demonstrate how the business development project will promote business and economic development in a rural county.

## **ENTERPRISE ZONE TAX CREDITS**

Eligible businesses locating or expanding in enterprise zones in Utah may claim state tax credits. Tax credits for new full-time positions, higher than county average wages, positions that add value to agricultural commodities through manufacturing or processing, and others, are available. Unused credits may be carried over for three years. Construction, retail, and public utilities are not eligible.

## **ENTERPRISE ZONE NONPROFIT**

Nonprofit organizations (501(C)(3) only) are encouraged to develop projects that have positive community and economic impacts in rural Enterprise Zone areas. If selected and approved, a nonprofit may provide a Utah state tax credit to their donors who make contributions to their approved project. Building or renovating state-owned buildings or housing projects, or scholarship funds, are not eligible.

## **TARGETED BUSINESS TAX CREDITS (TBTC)**

TBTC is a post-performance refundable tax credit of up to \$100,000 per project for significant capital investment and creation of high paying jobs in counties with populations of 25,000 or less. Businesses involved in construction, retail, and public utilities are not eligible.

## **RECYCLING MARKET DEVELOPMENT ZONE TAX CREDITS**

The Utah Recycling Market Development Zone program focuses on recycling as an economic development tool. The zone legislation was established to incentivize businesses to use recycled materials in manufacturing and to create new products for sale. Eligible recycling businesses qualify for a 5 percent Utah state income tax credit on the cost of machinery and equipment and a 20 percent Utah state income tax credit (up to \$2,000) on eligible operating expenses.

## **UTAH RURAL JOBS PROGRAM**

This program enables eligible small businesses located in rural counties to expand and create high wage jobs by providing flexible and affordable capital.

## **UTAH LOCAL INCENTIVES**

### **COMMUNITY REINVESTMENT AREAS (CRAs)**

In 2016, previous redevelopment tracks were replaced by one streamlined track called Community Reinvestment Areas. CRAs are the newest public tax increment financing tools aimed at



financing redevelopment activities from real and personal property taxable value increases. Often CRAs are used to remove urban blight, create new jobs, or develop vacant land.

#### **TAX INCREMENT FINANCING (TIF)**

TIF is a public financing tool for project areas that local municipalities use to incentivize private development. Project areas are created by municipal or city redevelopment agencies and are identified as being a good investment for housing or business development. After a project area is created, the redevelopment agency is entitled to receive all, or a portion of, the tax increment dollars – determined by a baseline of property taxes generated from the project area prior to creation – generated from the project area for a specified period of time, usually 15 to 20 years. The redevelopment agency can then use the tax increment dollars to incentivize development within the project area.

#### **UTAH EXPORT ACCELERATION GRANT**

In 2017, Salt Lake County, the World Trade Center Utah, and J.P. Morgan Chase launched a \$200,000 fund to help small to medium-sized businesses headquartered in Utah expand globally. Companies are eligible to receive up to \$10,000 in funding related to their international expansion. Grants are managed by World Trade Center Utah and made possible by J.P. Morgan Chase & Co. Law firms, consulting agencies, real estate developers, and nonprofit organizations are not eligible.

#### **REVOLVING LOAN FUNDS (RLFs)**

Numerous RLF programs have been established in the State of Utah to promote economic development. RLFs are typically a gap financing measure used for the development of small businesses. RLFs issue loans at competitive market rates. Loan amounts vary according to the use of funds.

#### **SALT LAKE COUNTY ECONOMIC DEVELOPMENT REVOLVING LOAN FUND (EDRLF)**

The Economic Development Revolving Loan Fund (EDRLF) lends to high-tech and manufacturing businesses that would not otherwise be eligible for a traditional bank loan yet have strong potential for growth. Businesses must create at least one job for each \$35,000 borrowed. Loans of up to \$400,000 are available for terms of three, four, or five years.

#### **EPA/WASATCH BROWNFIELDS COALITION BROWNFIELDS REVOLVING LOAN FUND**

A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance or contaminant. Funds in the form of low interest loans and grants are made available to eligible private, public, and nonprofit entities seeking to cleanup and redevelop brownfield sites throughout Salt Lake County and Ogden City. Loans must be at least \$10,000 and cannot exceed \$500,000. Grants cannot exceed \$200,000.

#### **INDUSTRIAL REVENUE BONDS**

Industrial revenue bonds are available and issued through local government entities. Qualified projects enjoy interest rates substantially below comparable commercial rates.

## **OTHER AVAILABLE INCENTIVES**

### **FOREIGN TRADE ZONE (FTZ)**

Salt Lake City's foreign trade zone #30, located near the Salt Lake City International Airport, now enables companies within a 60-mile radius of the current zone to secure Foreign Trade Zone status for warehousing and distribution operations. Companies within the zone can reduce costs of customs duties and fees by importing goods without paying duties at that time, and can then warehouse, assemble, manufacture, package and exhibit merchandise, only paying duties when goods are shipped from the zone. It is recommended that participants import at least \$1 million in goods to offset the price associated with joining an FTZ.

### **SALT LAKE CITY ECONOMIC DEVELOPMENT LOAN FUND**

The goal of this program is to invest in viable businesses that produce strong economic returns and provide positive social and environmental impacts. Loans are available for startup and existing businesses, business expansion in or relocation to Salt Lake City, energy-efficient equipment upgrades and building retrofits, construction or real estate acquisition, working capital and marketing. Startups can apply for loans up to \$100,000; existing businesses can apply for up to \$350,000 in loans. Loan terms are six months to seven years. Interest rate reduction incentives are available and are based on city goals.

### **FREEReport LAW**

Inventory or other tangible personal property held for sale in the ordinary course of business or for shipping to a final out-of-state destination within 12 months is exempt from property tax.

### **EMPLOYEE RECRUITING/SCREENING/TRAINING ASSISTANCE**

The Department of Workforce Services (DWS) provides multiple resources to help improve economic opportunities in the state. Resources include support services, employee skill development, help with compliance issues, information on accommodation, and information on various tax credits for hiring veterans and the homeless. Workforce development specialists support recruitment and job postings. The online job board allows employers to filter applicants by specific abilities, education, and other criteria.

*Sources: Utah Governor's Office of Economic Development, Salt Lake County Regional Economic Development, Economic Development Corporation of Utah, Salt Lake City Economic Development*

## **EXPORTS**

Utah's merchandise exports grew from \$7.8 billion in 2006 to nearly \$12.1 billion in 2016. The state's leading export industry continues to be primary metal products, which accounts for approximately 40 percent of total merchandise exports. Utah saw substantial gains in manufacturing, transportation equipment, and electrical equipment exports. Other industries, including computers and electronics, chemicals, machinery, and plastics and rubber declined. Once again the United Kingdom was Utah's largest export destination, followed by Hong Kong, Canada, Mexico, and China. Exports to Free Trade Agreement partners increased by 92 percent, making up 26 percent of exports from Utah. Utah promotes value-added exports to diverse markets around the world, and continues to support increased exports from rural Utah in an effort to expand growth. Additionally, the "Inland Port Exploratory Committee" is exploring the feasibility of an inland port in Utah that could transform the state into a global economic player.

*Source: 2018 Economic Report to the Governor*





## ARTS

A strong arts and entertainment industry is critical to quality of life metrics and a business's desire to remain in, expand into, or relocate to a particular area. Utah ranks consistently high in number of communities with vibrant art scenes. Utah is home to the Sundance Film Festival, Deer Valley Music Festival, Utah Museum of Fine Art, Ballet West, Pioneer Theatre Company, Repertory Dance Theatre, Odyssey Dance Utah, the Utah Opera and Utah Symphony, Cedar City's annual Shakespearean Festival, and Tuacahn Theatre, which is set outdoors in the spectacular red rock of southern Utah. The impressive new Eccles Theatre in Salt Lake City hosts touring Broadway shows, concerts, and other events.

*Source: Economic Development Corporation of Utah*

## GEOGRAPHY

Utah is often called the "Crossroads of the West" because of its central location to many other western states, bordered by all of the mountain states except Montana. Salt Lake City, the capital, is centrally located along the populous Wasatch Front, which runs from Brigham City in the north to Nephi in the south.

At 84,916 square miles, Utah is the thirteenth largest state in the United States. The state is divided into three distinct regions: the Colorado Plateau of the south and southeast; the Great Basin region in the northwest; and the Rocky Mountains running through the center.

The Colorado Plateau contains flat lands, colorful gorges, rugged mountains and valleys, and unique land formations, many of which are now protected in national parks and monuments. The Utah section of the plateau holds large deposits of natural resources, including coal, natural gas, and uranium.

The Great Basin is a series of mountains and basins created by the prehistoric Lake Bonneville. It is home to the Bonneville Salt Flats and the Great Salt Lake, the largest salt water lake in the Western Hemisphere.

Running north and south through the center of Utah, the Wasatch and Uintah ranges of the Rocky Mountains provide spectacular scenery and abundant recreational opportunities year-round.

*Source: State of Utah historytogo.utah.gov website, World Atlas*

## CLIMATE

The Wasatch Front area enjoys four distinct seasons. While temperatures are generally mild, spring can be dramatic, with rainstorms or snow flurries one minute and warm temperatures and sunny skies the next. In the spring it is not unusual for outdoor enthusiasts to ski in the mountains in the morning and golf in the valley in the afternoon.

Summer in northern Utah is warm but pleasant. July is the hottest month with an average daytime high of 92 degrees. Dry, high country air makes the warm temperatures agreeable.

Autumn is the favorite season of many visitors and residents. Brilliant fall colors blanket the mountains and cooler temperatures prevail.

Winter snows turn Utah into a wonderland. World-class ski resorts located 40 minutes from downtown Salt Lake City and 500 inches of the "Greatest Snow on Earth" entice skiers from all over the

world. By contrast, the Salt Lake Valley receives an average of 56 inches of snow each winter. Surprisingly pleasant above-freezing temperatures help keep roads free from ice and snow build-up.

Southern Utah experiences a dramatically different climate, with warm summers, mild winters, little precipitation, and low humidity. The region's state and national parks and championship golf courses provide plentiful recreational opportunities all year.

*Source: Utah Office of Tourism*

## **EDUCATION / TRANSPORTATION**

### **EDUCATION**

Utah school districts strive to provide equity of educational opportunities for all students to excel and achieve academic success. Utah's public primary and secondary schools operate under an open enrollment program, which means students may attend any public school provided they meet the admittance criteria. Although Utah's average class size generally ranks higher than the national average, its schools compare well academically against the national rankings and consistently achieve excellent academic results. Utah's education system offers a variety of public, private, parochial, virtual and charter school options to accommodate educational preferences of Utah families.

In addition to regular school programs, the Utah State Board of Education offers students access to courses from a statewide online education program (SOEP) which gives students flexibility and enables them to gain competency and acquire technological skills. Utah high school students are also able to earn college credit through Advanced Placement test participation. Universities and colleges grant course credit to students who obtain high scores on AP exams while still attending high school.

For additional information about Utah's public education and the Utah State Board of Education's programs visit – <https://www.schools.utah.gov>

### **HIGHER EDUCATION**

The Utah System of Higher Education (USHE) is governed by the State Board of Regents and is comprised of Utah's eight public colleges and universities. These eight public institutions consist of two research universities, one liberal arts & sciences university, three regional universities and two community colleges.

The USHE is committed to providing affordable and competitive postsecondary education that is accessible to all Utah residents and is also welcoming to out-of-state and international students. They are focused on helping Utahns achieve their desired levels of educational attainment, and work to develop programs that help increase the number of students enrolled in and completing a college education. In 2017, USHE reported Utah's public universities were ranked as having the 4th lowest average tuition in the nation, with enrollment growing by 2.78% in 2015-16.

Utah encourages students to improve themselves and their community through higher education and lifelong learning. As a result of this commitment, Utah's colleges and universities are ranked among some of the best in the nation.

To find additional information about Utah's educational institutions, degree programs offered, and financial aid, visit – <https://higheredutah.org>



**THE UNIVERSITY OF UTAH**

[www.utah.edu](http://www.utah.edu)

The University of Utah (U of U) is one of the premier institutions in the nation and is known for student-driven cutting edge research and innovative startup companies. Students get the state-of-the-art resources and support they need through the University's "Innovation Ecosystem" made up of numerous innovative centers and institutes that form a collaborative partnership for student growth.

The University of Utah offers graduate and specialty programs through its 17 different colleges and schools that include business, engineering, fine arts, mines & earth sciences, nursing, education, and social work. The University's S.J. Quinney College of Law is one of two law schools located in Utah and is nationally recognized for its exceptional academic programs. The University's School of Medicine is also widely recognized for its progressive medical research and leading-edge medicine.

The University of Utah has both strong academic and athletic programs that rank among the best in the nation. The University offers students a variety of men's and women's sport programs such as cross country, basketball, baseball, football, gymnastics, skiing, soccer, softball, swimming, tennis, and volleyball. In July 2011, the University officially became a member of the Pac-12 Conference.

**UTAH STATE UNIVERSITY**

[www.usu.edu](http://www.usu.edu)

Utah State University (USU) is a land-grant and public research university, founded in 1888. Utah State is nationally recognized for its intellectual and technological leadership, and is a premier land-grant and space-grant university. The university reported approximately 27,679 undergraduate and graduate students enrolled in 2017. Utah State is tucked away in the northern Utah mountains of Logan, just five hours from Yellowstone National Park.

**WEBER STATE UNIVERSITY**

[www.weber.edu](http://www.weber.edu)

Weber State University (WSU), located in Ogden, Utah in the foothills of the Wasatch Mountains, was founded in 1889 and became a university in 1991. Weber State University is a comprehensive public university offering more than 225 certificate and degree programs and 13 graduate programs in a variety of subjects such as science, arts and humanities, business and administrative finance, education, health, engineering and technology. They reported an enrollment of 26,809 in 2017.

**SOUTHERN UTAH UNIVERSITY**

<https://www.suu.edu>

Southern Utah University (SUU), a liberal arts & science university, is located in beautiful southern Utah a short driving distance from several famous National Parks, such as Bryce Canyon, Zions National Park and Great Basin National Park. It was designated as the only "University of the Parks" in the nation by the National Park Service for its close proximity to almost 20 National Parks and Monuments.

SUU offers 140 undergraduate and 19 fully accredited graduate programs that include aviation, computer science, education, humanities and outdoor & environment. SUU is recognized for its private school quality education at an affordable price. Its athletic department offers competitive team programs that maintain focus on both student athletics and academics. SUU hosts the well-known Utah Shakespearean Festival, which attracts visitors from around the U.S. each summer to enjoy the surrounding scenery.



**DIXIE STATE UNIVERSITY**

[www.dixie.edu](http://www.dixie.edu)

Dixie State University (DSU) is a public comprehensive university located in St. George, Utah among some of Utah's most beautiful desert scenery. Dixie offers 147 certificate and degree programs in small class settings. The nursing program is fully accredited by the ACEN and regularly achieves the highest student pass rate among Utah programs on the RN licensor exam. DSU provides many cultural performance opportunities for the community, many of which are featured in the university's Dolores Eccles Fine Arts Center.

**UTAH VALLEY UNIVERSITY**

<https://www.uvu.edu>

Utah Valley University (UVU), located in Orem, Utah, is an open admission institution that offers 44 certificate, 62 associate, 84 bachelor and 8 master programs while maintaining smaller class sizes and a focus on students' academic success. UVU has increased its online course offerings over the past several years to accommodate its larger population of students who work part-time and a higher enrollment average of students over the age of 25.

**UTAH STATE UNIVERSITY EASTERN**

<https://usueastern.edu>

Utah State University – Eastern (USUE) is a public regional college within the Utah State University system with two full-service residential campuses in Price and Blanding, Utah. USUE incorporates the academic excellence of Utah State University with its small class sizes, low-cost tuition and a community college environment. USUE offers a wide range of academic certificate, associate and bachelor degree programs, as well as 19 masters programs and a competitive doctorate program in education.

**SALT LAKE COMMUNITY COLLEGE**

[www.slcc.edu](http://www.slcc.edu)

Salt Lake Community College (SLCC) offers students a personalized education at 5 campus locations across the Salt Lake Valley. SLCC reports serving over 61,000 students each year, while maintaining a student-to-teacher ratio of 20-1. SLCC is a progressive college offering programs in a wide variety of academic and professional fields ranging from business, trades and technology, service occupations, health sciences, humanities, and physical and biological sciences. The college consistently ranks in the top 5 nationally for associate's degrees awarded. Over half of its student population work while attending SLCC, with 73 percent of its students easily transferring to 4-year institutions to continue their education.

**SNOW COLLEGE**

<https://www.snow.edu>

Snow College has campus locations in Ephraim and Richfield, Utah and is a premier residential community college. The college is home to over 5,000 students, with an average class size of 16, a 47 percent graduation rate and a 34 percent transfer rate. Snow College offers quality 2 and 4-year degree programs. Snow boasts nationally recognized performing arts, math, and science programs and regionally competitive athletic programs including football, basketball, volleyball, softball and soccer.

## **UTAH SYSTEM OF TECHNICAL COLLEGES**

<http://utech.edu>

The Utah System of Technical Colleges (USTC) is a statewide network of eight technical colleges located throughout Utah. USTC's mission is to "meet business and industry needs for technically-skilled workers and promote economic development by providing market-driven technical education". USTC provides long and short-term education, training, and apprenticeship programs that can be custom-fit to help employers promote and train a highly skilled workforce.

## **PRIVATE EDUCATION**

### **BRIGHAM YOUNG UNIVERSITY**

[www.byu.edu](http://www.byu.edu)

Brigham Young University (BYU) is a private university located in Provo, Utah at the base of the Wasatch Mountains. BYU has an enrollment of approximately 30,000 undergraduate and 2,800 graduate students. Its student population consists of both local and international students, and more than half of its students are fluent in a second language. BYU offers 286 undergraduate, 62 masters, and 26 doctoral programs. It is home to the J. Reuben Clark Law School and Marriott School of Management, and has additional campuses in Idaho and Hawaii.

### **WESTMINSTER COLLEGE**

[www.westminstercollege.edu](http://www.westminstercollege.edu)

Westminster College is a private, comprehensive liberal arts college located in the heart of beautiful Salt Lake City. Its central location offers students convenient access to the downtown area and a short commute to popular mountain resorts. Westminster is the only private nondenominational college in Utah, with a total enrollment of around 2,700 students, and is distinguished by its unique environment for learning. It offers a broad array of undergraduate and graduate programs in business, arts and sciences, nursing and health sciences, and education. Westminster has been consistently recognized on *The Princeton Review* Best Colleges list for more than a decade.

## **TRANSPORTATION**

Utah has continued to experience tremendous growth and development over the past several years. As part of that progress, city and community leaders are making efforts to address air quality and traffic congestion by promoting projects and services that align with the state's reduction goals. In 2013, Salt Lake City introduced a non-profit bike share program called GREENbike (<https://greenbikeslc.org>), an innovative urban transportation solution that is affordable, fun and convenient. In 2018, the Salt Lake City Council also legalized Lyft and Uber rideshare services in Utah to offer people more transportation options. Utah also offers several public transportation programs that connect many of its cities and provide convenient travel options for daily commuters and tourists. Utah is continuously expanding its transportation systems to accommodate travelers and meet the needs of Utah's growing communities.

### **UTAH TRANSIT AUTHORITY**

<https://www.rideuta.com>

The Utah Transit Authority (UTA) is a regional public transportation service that provides a variety of bus and light rail train services with connecting routes throughout Salt Lake, Davis, Utah and Weber counties. UTA's city, commuter, ski, rapid transit, paratransit and flex route bus services make travel more efficient and accessible. UTA's TRAX, FrontRunner and S-Line light rail train routes connect





several cities and landmarks, including direct routes to the University of Utah and the Salt Lake City International Airport. UTA planners continue to collaborate with city leaders on “next-level transit solutions” and have active projects to expand and develop public transportation services to provide even more efficient, wide-ranging travel options that are available to all travelers.

#### **SALT LAKE CITY INTERNATIONAL AIRPORT**

<https://www.slairport.com>

The Salt Lake City International Airport (SLC) is managed by the Salt Lake City Corporation’s Department of Airports. It is located five miles northwest of downtown Salt Lake City with two terminals, five concourses and 71 aircraft gates. It is the 25th busiest airport in North America and the 85th busiest in the world for number of travelers passing through.

The Salt Lake City International Airport is currently under construction, adding a new terminal complex to better serve the more than 24 million passengers that pass through the hub airport each year. Construction for the “Terminal Redevelopment Program” began in 2014 and will continue to roll out in phases through 2024. The new construction designs are intended to meet evolving security needs, technological updates and current earthquake safety standards, as well as to increase the efficacy and functionality of outdated facilities. The new complex is designed to meet the demands of the constantly changing aviation industry and Salt Lake City’s growing population.

The Salt Lake City International Airport promotes efficient travel access with convenient on-site parking, routine shuttle and transportation services, and a direct connection to Salt Lake City’s TRAX/Light Rail Service and Bus transportation systems.

Sustainability and air quality are priorities in Salt Lake City and the city has set aggressive carbon and pollution reduction goals as part of its “Climate Positive SLC” initiative. The Climate Positive SLC initiative states that it “commits to achieve 100 percent renewable energy for community electricity by 2032 as well as an 80 percent reduction in greenhouse gas emissions by 2040”, and the airport will play an important role in reaching these goals. The airport aims to consistently improve energy efficiency, water and waste reduction, and recycling and green building efforts. It also recently installed 24 electric vehicle charging stations for public and employee use as part of the new redesign. <https://www.slc.gov/sustainability/climate-positive>.

## **SPORTS & ENTERTAINMENT / RECREATION**

### **SPORTS & ENTERTAINMENT**

Utah is home to a variety of professional and affiliate sports teams that provide family fun and competitive athletic entertainment to the Utah community in state-of-the-art venues.

#### **MAJOR LEAGUE TEAMS**

##### **UTAH JAZZ - BASKETBALL**

[www.nba.com/jazz](http://www.nba.com/jazz)

The Utah Jazz, Utah’s professional basketball team, came to Utah in 1979 as part of the National Basketball Association Western Conference. The Utah Jazz play at the Vivint Smart Home Arena, located in the heart of downtown Salt Lake City.



#### **REAL SALT LAKE - SOCCER**

[www.rsl.com](http://www.rsl.com)

Real Salt Lake (RSL), Utah's professional soccer team, was founded in 2005 as part of the Major League Soccer Western Conference. Real Salt Lake play at Rio Tinto Stadium in Sandy and are a permanent staple of the Utah sports community.

#### **UTAH ROYALS FC - SOCCER**

[www.rsl.com/utahroyalsfc](http://www.rsl.com/utahroyalsfc)

The Utah Royals, Utah's professional women's soccer team, was founded in 2017 as part of the National Women's Soccer League. The Utah Royals FC play at Rio Tinto Stadium in Sandy and bring the best of highly competitive professional soccer to the Utah sports scene.

### **MINOR LEAGUE TEAMS**

#### **UTAH GRIZZLIES – ICE HOCKEY (ECHL)**

[www.utahgrizzlies.com](http://www.utahgrizzlies.com)

The Utah Grizzlies, Utah's professional ice hockey team, came to Utah in 2005 as part of the ECHL Western Conference. The Grizzlies are the affiliate team of the NHL's Colorado Avalanche and play at the Maverik Center, located in West Valley City.

#### **SALT LAKE BEES – BASEBALL**

[www.milb.com/salt-lake](http://www.milb.com/salt-lake)

The Salt Lake Bees, Utah's minor league baseball team, is the triple-A affiliate of the Los Angeles Angels and play in the Pacific Coast League (PCL). The Bees play in the Smith's Ballpark in Salt Lake City. The stadium is the largest in the PCL, situated amongst some of the most picturesque views in baseball.

#### **REAL MONARCHS - SOCCER**

[www.rsl.com/monarchs](http://www.rsl.com/monarchs)

Real Monarchs was founded in 2014 as the reserve team of Major League Soccer's Real Salt Lake. Real Monarchs play at the Zions Bank Stadium in Herriman, and have been a successful USL franchise for Utah.

### **RECREATION**

The spring and summer seasons offer a multitude of outdoor recreational activities, such as hiking, biking, rock climbing and fishing. Utah has several outdoor venues such as the USANA Amphitheater, Red Butte Gardens, The Gateway Mall, and Tuacahn Theatre that draw popular entertainers to perform surrounded by beautiful natural scenery. Live music concerts, cultural festivals, farmers markets and sporting events can be found regularly around the valley. Several Utah cities and towns also host movie nights, art festivals, concert events, and farmers markets in their local parks.

Park City's Summer Concert Series combines music with breathtaking alpine mountainscapes for the perfect getaway when summer temperatures rise in the city. The Utah Olympic Sports Park is maintained by the Utah Olympic Legacy Foundation as a multi-use facility offering a wide variety of adventure activities for families, a place for young winter sports athletes to train, and a memorial to the brilliance of the 2002 Olympic Winter Games (<https://utaholympiclegacy.org>).

Utah has five national parks (Bryce Canyon, Capitol Reef, Arches, Canyonlands and Zions), seven national monuments, and six national forests open to the public for Utahns and visitors alike to enjoy recreation and outdoor activities in some of the most unique natural scenery on Earth.

Utahns enjoy all four seasons but for many, winter is the season of choice due to the wealth of outdoor recreation and activities. Utah has 14 ski resorts that are conveniently located just a short drive from neighboring cities. Utah's skiing and snowboarding season is enjoyed by visitors from all over the world.

## **CHAPTER II: BUSINESS ENTITIES**

### **BUSINESS ENTITIES CORPORATIONS**

A business corporation is a legal entity that is separate and distinct from its owners. Its owners are shareholders who elect directors to set corporate policy. The directors then appoint officers to manage the day-to-day business operations of the corporation.

#### **FORMATION**

A Utah corporation is formed by filing Articles of Incorporation with the Utah Division of Corporations and Commercial Code, part of the Utah Department of Commerce. At a minimum, the Articles must include the name of the corporation, the purpose for which the corporation is organized (which may include any lawful activity for which a corporation may be formed), the number and class of shares the corporation is authorized to issue, the street address of the corporation's registered office, and the name and address of each of the incorporators.

#### **NAME**

Except for depository institutions, the name of a corporation must include the word "corporation," "incorporated," or "company," or an abbreviation of one of those terms. The name also must be distinguishable from any other business name registered with the state. Prior to incorporation, individuals may reserve a business name with the Division of Corporations and Commercial Code. Names may be reserved for 120 days, renewable for an additional 120-day period prior to expiration. Additionally, a corporation may conduct business under a name other than that of the corporation itself by registering that other business name with the Division of Corporations and Commercial Code. Such other business name registrations are good for a period of three years and may be renewed.

#### **LIABILITY**

Perhaps the most attractive feature of the corporate form is the limited liability of its owners. Unless otherwise provided in the Articles of Incorporation, shareholders are not personally liable for the debts of the corporation and generally stand to lose only the amount they have invested in the corporation. However, the corporate form may be disregarded, and the owners subject to personal liability, if the corporation is treated as a mere alter ego of the owners, if corporate formalities are ignored, or if business and personal assets or funds are co-mingled.



## **MANAGEMENT**

Each corporation must have a board of directors. The board of directors is ultimately responsible for managing the affairs of the corporation. Each corporation must have at least three directors on the board if the corporation has issued shares of stock to at least three stockholders. If there are fewer than three stockholders, the number of directors may be equal to or greater than the number of stockholders. Unless provided otherwise by the Corporation's Articles of Incorporation or Bylaws, a majority of directors present at board meetings must approve any action by the board. However, no action can be taken unless there is a quorum of directors present. Unless otherwise provided in the Articles of Incorporation or Bylaws, a quorum is defined as a majority of directors, but in any case can be no less than one-third of the directors.

The board may appoint officers, as provided in the Bylaws, to manage the day-to-day operations of the corporation. The officers generally have the authority and responsibilities outlined in the Bylaws or as provided by the board of directors.

## **SHARES AND DISTRIBUTIONS**

The Articles of Incorporation must specify the classes of shares and number of shares in each class that the corporation may issue. If more than one class of shares is authorized, the Articles of Incorporation must also describe the preferences, limitations, and relative rights of each class. The board of directors may authorize dividends to shareholders at its discretion, unless otherwise provided by the Articles of Incorporation or Bylaws.

## **AMENDMENTS, MERGERS, DISSOLUTION**

Shareholder approval is required for most substantive changes to the corporation, such as amendments to its Articles of Incorporation, corporate mergers, and dissolution. A corporation may also be involuntarily dissolved by judicial or state administrative action under certain circumstances, including failure to file annual reports or pay required fees.

## **TAXATION**

A corporation that has not made an "S Corporation" election to be taxed as a partnership under the Internal Revenue Code must pay taxes on its profits. Shareholders must also pay taxes on any dividend distributions received from the corporation. This "double taxation" is one of the negative aspects of the corporate form.

## **PROFESSIONAL CORPORATION**

In Utah, a professional corporation may be organized by a group of professionals licensed in the same occupation, such as attorneys, physicians, dentists, and accountants. Only individuals licensed to render the same services as those for which the corporation was organized may be an officer, director, or shareholder; provided, however, any individual may serve as secretary or treasurer. Professional corporations are formed in the same way as traditional business corporations: by filing Articles of Incorporation with the Division of Corporations and Commercial Code.

## **PARTNERSHIPS**

A partnership is an association of two or more individuals or entities to carry on business for profit. There are two types of partnership under Utah law: general partnerships and limited partnerships. The primary difference between general and limited partnerships is the degree of liability borne by the partners.



## GENERAL PARTNERSHIP

**Formation.** A general partnership can be formed by oral or written agreement between the partners. No documents need be filed with the State to form a general partnership, although the partnership may need to register a business name and obtain a local business license. In many cases, a partnership will be deemed to exist under Utah law, even without an express partnership agreement, where two or more individuals engage in a business enterprise or venture for profit.

**Liability.** Unlike a corporation, a general partnership does not shield the partners from personal liability. Each partner has unlimited joint and several liability for the debts of the partnership and acts committed by other partners in the course of business.

**Management.** Every partner is an agent of the partnership for the purpose of its business, and the act of any partner generally binds the partnership and the other partners. Unless otherwise provided by the partnership agreement, each partner has an equal voice in management decisions and an equal share in the profits and losses of the partnership.

**Dissolution.** A general partnership may be terminated by agreement of the partners, by the death of a partner, through unilateral withdrawal by one or more partners, by the bankruptcy of any partner or the partnership, or by court order. Upon dissolution, the partnership must wind up business, liquidate, and distribute its assets to the partners.

**Taxation.** Each partner is taxed at personal income tax rates for his, her or its share of partnership profits, whether or not the profits are actually distributed to the partners. Although the partnership is not separately taxed as an entity, the partnership is required to file informational tax returns with the Internal Revenue Service and the Utah State Tax Commission.

## LIMITED PARTNERSHIP

Utah law also provides for the formation of limited partnerships. A limited partnership must register with the Division of Corporations and Commercial Code. In contrast to a general partnership, a limited partner in a limited partnership is not personally liable for the acts or omissions of the partnerships or any other partner of the limited partnership.

**Formation.** A limited partnership consists of at least one general partner and one or more limited partners. A limited partnership is formed by written agreement among the partners and the filing of a Certificate of Limited Partnership with the Utah Division of Corporations and Commercial Code. The partnership agreement need not be filed. The Certificate of Limited Partnership must include the name of the partnership, the street address of its principal office, the name and street address of its registered agent, the name and address of each general partner, and whether the limited partnership is a limited liability partnership. The limited partners need not be disclosed.<sup>1</sup>

**Name.** The name of the limited partnership must contain the terms “limited partnership,” “limited,” “L.P.,” or “Ltd.” The name may not contain the name of a limited partner or the words “association,” “corporation,” or “incorporated.” A limited partner who allows his name to be used in the name of the partnership may be liable to creditors of the partnership. A limited partnership may also conduct business under a name other than that of the limited partnership itself by registering that other business name with the Division of Corporations and Commercial Code. Such other business name

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<sup>1</sup> § 48-2e-201, 203





registration is good for a period of three years and may be renewed. Additionally, in advance of limited partnership formation, business names may be reserved for 120 days, renewable for an additional 120-day period, prior to expiration.

**Liability.** In a limited partnership, only the general partners are personally liable for the debts of the partnership and the acts of other partners. Limited partners, provided they do not participate in the management, operation, or control of the business are not liable for the debts of the partnership or the acts of the partners. Generally, limited partners stand to lose only the amount of their investment in the partnership.

**Management.** Limited partnerships are managed by the general partners, pursuant to the partnership agreement. As indicated above, limited partners may not participate in the management, operation, or control of the limited partnership without the risk of losing their limited liability protection. However, a limited partner may be a contractor, agent, or employee of the partnership without “participating in the control” of the business. A limited partner may also consult with or advise a general partner, guarantee obligations of the partnership, attend meetings, and vote on certain partnership matters such as dissolution and admission or removal of partners.

**Dissolution.** A limited partnership is dissolved upon the occurrence of events specified in the partnership agreement, upon the written consent of all general partners and of limited partners owning a majority of the right to receive distributions as limited partners, or upon the entry of a decree of judicial dissolution. A limited partnership also dissolves upon the withdrawal of a general partner unless there is at least one other general partner and the partnership agreement allows the business of the partnership to be carried on by the remaining partner, or, if within 90 days of the withdrawal, all partners agree in writing to continue the business of the partnership and appoint at least one additional general partner as necessary.

**Taxation.** A limited partnership is treated like a general partnership for purposes of taxation. Thus, a limited partnership is generally not a separately taxable entity. Rather, taxes are assessed against the individual partners on each partner’s share of the taxable income of the partnership.

#### LIMITED LIABILITY PARTNERSHIP

**Formation.** In Utah, a partnership may elect to be a limited liability partnership (LLP) by filing an application with the Division of Corporations and Commercial Code. The application must include the name of the LLP, the address of the principal office, and the name and address of the registered agent. If the principal office is located outside the state, then the application must also designate a registered office within the state and a registered agent at that registered office. The application must be renewed annually. Otherwise, the requirements to form an LLP are the same as for a general partnership.

**Name.** The name of the limited liability partnership must contain the terms “limited liability partnership,” or “LLP”.

**Liability.** The partners in an LLP are not personally liable for partnership debts or for the acts of the partnership or other partners. They generally stand to lose only what they have invested in the partnership. However, partners in an LLP are still liable for their own negligent or wrongful acts.

**Management.** Aside from the limited liability aspect, an LLP operates as a general partnership in all other respects.



## LIMITED LIABILITY COMPANY

Limited liability companies combine some of the best features of corporations and partnerships. Like a corporation, a limited liability company can shield its owners, or “members,” from personal liability for company debts and, if properly structured, can avoid double taxation like a partnership.

**Formation.** A limited liability company is formed by filing a Certificate of Organization with the Utah Division of Corporations and Commercial Code. The Certificate of Organization must include: the name of the company; the street and mailing address of its principal office; and the name and address of its registered agent; and a signature by at least one person acting as an organizer. Utah also allows for series limited liability companies.

**Name.** The name of a limited liability company must include the words “limited liability company,” “limited company,” “LC,” or “LLC.”

**Liability.** As with the corporate form, the members and managers generally are not personally liable for the debts of the business and stand to lose only the amount they have invested in the LLC.

**Management and Structure.** The LLC may be managed by one or more managers or by all of its members. If the management structure is not otherwise designated in the Operating Agreement, management of the LLC will be vested in its members. The powers, rights, and duties of the manager(s) may be set forth in the Company’s Operating Agreement (similar to Bylaws).

## SOLE PROPRIETORSHIP

A sole proprietorship exists when an individual conducts business in his or her own name or under a business or trade name. The owner enjoys complete authority and control over the business but is also subject to unlimited personal liability for all debts of the business. The owner must also report any profits made from the business as personal taxable income. A sole proprietorship cannot be sold or otherwise conveyed as a separate entity and terminates automatically upon the death of the owner.

Depending on the nature of the business, the owner may need to obtain a local business license. If a business or trade name is used, the owner will need to register that trade name with the Utah Division of Corporations and Commercial.

## COOPERATIVES

In general terms, a cooperative is a corporation or association formed to provide economic services to its members without gain to itself. Examples include consumer cooperatives, business purchasing cooperatives, labor unions, and trade associations. Except as otherwise provided by statute, a cooperative is simply a method of doing business, not a business entity.

Credit unions and agricultural cooperatives are specifically provided for under Utah law. A credit union is a cooperative, non-profit association, operating as a financial institution to a statutorily limited field of membership. An agricultural cooperative is a nonprofit association of agricultural producers organized for cooperative activity, such as producing, harvesting, marketing, buying, and selling agricultural products. Statutory cooperatives can be exempt from certain antitrust regulations.

## **BUSINESS TRUST**

A business trust is an alternative type of business association. It is formed by a declaration of trust, which transfers property to a trustee to be held and managed by the trustee for the beneficial owners of the trust estate. A business trust must register with the Utah Division of Corporations and Commercial Code prior to doing business in the state.

## **NONPROFIT CORPORATIONS**

As its name suggests, a nonprofit corporation differs from other corporations in that it is not organized for the purpose of generating a distributable profit. Thus, a nonprofit corporation does not have shareholders and cannot pay dividends.

In Utah, a nonprofit corporation may be formed for any lawful purpose. As with any corporation, a nonprofit corporation is formed by filing Articles of Incorporation with the State. The Articles must include: the name of the corporation; the purpose for organizing the corporation; the name and address of the registered agent; the name, signature, and address of each incorporator; the street address of the principal office; a statement declaring whether or not the corporation will have “voting members;” and a statement declaring whether or not the corporation will issue shares of stock and, if yes, the number and type of shares.

Merely filing with the state as a nonprofit corporation does not guarantee tax-exempt status. A nonprofit corporation must also meet the requirements of the Internal Revenue Service for federal tax exemption.

A cooperative association may also incorporate under the nonprofit corporation act if it is not subject to the insurance or credit union laws of the state and is not a health insurance purchasing association or alliance. An agricultural cooperative association may be formed as a corporation under the Uniform Agricultural Cooperative Associations Act. An agricultural cooperative may also convert itself into a cooperative association under the nonprofit corporation act by adopting appropriate amendments to its Articles of Incorporation.

## **FOREIGN BUSINESS ENTITY**

An out-of-state business may establish a branch office in Utah without forming a separate business entity. It may also use sales representatives or contract with local distributors or franchisees to conduct business in the state. However, the out-of-state business may need to qualify to do business in Utah by registering with the Utah Division of Corporations and Commercial Code. It may also need to obtain a local business license from any city or county in the state where it conducts business.

A foreign business entity generally may not transact business in Utah without first qualifying to do business in the state. To do so, the foreign business entity must file with the Division of Corporations and Commercial Code an application for authorization to conduct business as a foreign entity. A foreign corporation must provide a certificate of existence from the home state of incorporation. The failure of a foreign business entity to qualify to do business in Utah does not impair the validity of its business activities in the state. However, the entity may be subject to civil penalties and other potential liabilities for failing to qualify.

Precisely what constitutes “transacting business” in Utah is undefined. However, by statute, activities such as participating in litigation, maintaining bank accounts, owning real or personal property, or conducting isolated transactions do not of themselves constitute “transacting business” in Utah.



## CHAPTER III: TRADE REGULATIONS

### TRADE REGULATIONS FEDERAL ANTITRUST LAW

The antitrust laws of the United States are primarily reflected in five federal statutes: the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, and the Hart-Scott-Rodino Act.

#### SHERMAN ANTITRUST ACT OF 1890

The Sherman Act is divided into two primary sections. Section 1 prohibits contracts, combinations, and conspiracies made in restraint of trade. Section 2 prohibits unilateral and combined conduct that monopolizes or attempts to monopolize trade. Under the Sherman Act, some restraints are “per se” unreasonable (such as price-fixing agreements between competitors) and others are subject to analysis under a “rule of reason” (such as some restrictions placed on a distributor by a manufacturer). Restraints subject to the “per se” rule are never permitted, while those governed by the “rule of reason” test will be evaluated on a case-by-case basis.

#### CLAYTON ACT OF 1914

The Clayton Act prohibits certain specific anticompetitive activities. For example, the Act prohibits some corporate mergers, exclusive dealing contracts, and agreements under which one product is sold subject to the requirement that the purchaser also buy another product from the seller (known as a “tying” arrangement).

#### ROBINSON-PATMAN ACT OF 1936

The Robinson-Patman Act prohibits a seller from discriminating (or inducing others to discriminate) among competing purchasers in the price charged for commodities “of like grade and quality.” While the Act focuses on price discrimination, it also addresses other concerns such as discriminatory advertising allowances.

#### FEDERAL TRADE COMMISSION ACT

The FTC Act declares unlawful “unfair methods of competition” and “unfair or deceptive acts or practices.”

#### HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

The Hart-Scott-Rodino Act requires that, under certain circumstances, a company proposing to merge with or acquire another company must give prior notice of the proposed acquisition to the Federal Trade Commission and the Justice Department. Failure to report may result in substantial fines.

#### ENFORCEMENT

Private individuals and corporations may bring lawsuits under the Sherman Act, the Clayton Act and the Robinson-Patman Act. Remedies may include injunctive relief, treble damages and attorney fees. The government may enforce the Sherman Act through criminal prosecutions and civil suits. In addition, the government may enforce the Clayton Act and the Robinson-Patman Act through the FTC or the Department of Justice. Only the government can enforce the Federal Trade Commission Act and the Hart-Scott-Rodino Act.



## REGULATION OF INTERNATIONAL TRADE AND INVESTMENT

Foreign investment in the United States and other international commercial activities involving United States entities are subject to a number of United States statutes and related regulations. The following discussion outlines some of the more important aspects of these laws that might be relevant to someone in vesting in or trading with entities located in the United States.

### RESTRICTIONS ON FOREIGN INVESTMENT

Under a statutory provision commonly referred to as the Exon-Florio Amendment (Section 721 of Title VII of the Defense Production Act of 1950, codified in 50 U.S.C. § 4565<sup>2</sup>), the United States President, or the President's designee, has broad authority to investigate and suspend or prohibit any merger, acquisition, or takeover by or with foreign persons which could result in foreign control of persons engaged in interstate commerce, if the President determines that such merger, acquisition, or takeover constitutes a threat to the national security of the United States. Congress has indicated that the term "national security" is to be interpreted broadly and that the application of the Exon-Florio Amendment should not be limited to any particular industry.

The statute sets out a timetable for investigations of transactions that can take up to 90 days to complete. The President or his designee has 30 days from the date of receipt of written notification of a proposed (or completed) transaction to decide whether to undertake a full-scale investigation of the transaction. The President has delegated the authority to make investigations pursuant to the Exon-Florio Amendment to the Committee on Foreign Investment in the United States ("CFIUS"). CFIUS is an interagency committee made up of representatives of various executive branch agencies. Notifications of transactions are not mandatory, and may be made by one or more parties to a transaction or by any CFIUS member agency.

If, at the end of the initial 30-day period after notification of a transaction, CFIUS decides that a full-scale investigation is warranted, it then has an additional 45 days to complete an investigation and make a recommendation to the President with respect to the transaction. The President then has 15 days to decide whether there is credible evidence that leads the President to believe that the foreign interest exercising control might take action to impair national security. If the President makes such a determination, Exon-Florio empowers the President to take any action that the President deems appropriate to suspend or prohibit the transaction, including requiring divestment by the foreign entity if the transaction has already been consummated.

United States law also places certain restrictions on acquisitions of businesses that require a facility security clearance in order to perform contracts involving classified information. Under Department of Defense regulations, foreign ownership may cause the Department to revoke a security clearance unless certain steps are taken to reduce the risk that a foreign owner will obtain access to classified information.

Assuming that a foreign owner will be in a position to "effectively control or have a dominant influence over the business management of the United States firm," the Department of Defense may require, as a condition to continuation of the security clearance, that the foreign owner establish a voting trust agreement, a proxy agreement, or a "special security agreement" approved by the Department of Defense. Such agreement must be designed to preclude the disclosure of classified information to the foreign owner or other foreign interests.

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<sup>2</sup> 50 U.S.C. § 4565



## **THE INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY ACT**

The International Investment and Trade in Services Survey Act (“IITSSA”), passed in 1976 and codified at 22 U.S.C. §§ 3101 – 3108, authorizes the President to collect information and conduct surveys concerning the nature and amount of international investment in the United States. The IITSSA’s primary function is to provide the federal government with the information necessary to formulate an informed national policy on foreign investments in the United States. It is not intended to regulate or dissuade foreign investment, but is merely a tool used to obtain the data necessary to analyze the impact of such investments on United States interests.

Under the IITSSA, subject to certain exemptions, all foreign investments in a United States business enterprise that result in a foreign person owning a 10 percent or more voting interest in that enterprise must be reported to the Bureau of Economic Analysis (“BEA”), a part of the United States Department of Commerce. Such reports must be made within 45 days after the investment transaction. Depending on the site of the entity involved, quarterly, annual, and quinquennial reports may be required thereafter. Ownership of United States real estate other than for personal use constitutes a business enterprise and falls within the requirement that reports be filed with the BEA.

Reportable transactions are reported to the Secretary of Agriculture on Form BE-13. The form collects certain financial and operating data about the investment, the identity of the acquiring entity, and certain information about the ultimate beneficial owner. In addition, a Form BE-14 must be filed by any United States person assisting in a transaction that is reportable under Form BE-13. Information submitted to the BEA is kept confidential and is not used for tax, regulatory, investigatory, or other purposes.

## **THE AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT OF 1978**

The Agricultural Foreign Investment Disclosure Act of 1978 (“AFIDA”) requires all foreign persons to report holdings, acquisitions and dispositions of United States agricultural land. The Act contains no restrictions on foreign investment in United States agricultural land and is aimed only at gathering reliable data from reports filed with the Secretary of Agriculture to determine the nature and magnitude of this foreign investment. Unlike the reports filed under the IITSSA, reports filed under AFIDA are not confidential and are available for public inspection.

Reportable transactions must be reported on Form ASCS-153 or Form FSA 153 within 90 days. The report requires rather detailed information concerning such matters as the identity and country of organization of the owning entity, the nature of the interest held, the details of a purchase or transfer, and the agricultural purposes for which the foreign person intends to use the land. Failure to file a report required under AFIDA may trigger a civil penalty of up to 25 percent of the fair market value of the land.

## **EXPORT CONTROLS**

In general, United States export controls are more stringent and restrict a wider array of items than the export controls of most other countries. Except for exports to United States territories and possessions, and in most cases, Canada, all exports from the United States are subject to an export “license.” An export license is an authorization that allows the export of particular goods or technical information. Two basic types of licenses exist: general licenses and individual validated licenses.

There are many types of general licenses. These are authorizations which are generally available and for which it is not necessary to submit a formal application. They cover all exports that are not subject to a validated license requirement. Most exports can be made under one of these general classifications.



In contrast, individual validated licenses are required for those items for which the United States specifically controls the export for reasons of national security, foreign policy, or short supply. If the export of a specific product to a specific destination is subject to an individual validated license requirement, it is necessary to apply for and obtain such a license from the Office of Export Administration, an office within the United States Department of Commerce, prior to the export. Certain commodities cannot be exported to any country without an individual validated license, while certain other commodities may require a validated license only for shipment to specified countries.

For purposes of the United States export control regulations, an export of technical information occurs when the information is disclosed to a foreign national, even if such disclosure occurs within the United States. Thus, if disclosure of information is subject to a validated license requirement, the disclosure may not be made to a foreign national without first obtaining the necessary validated license regardless of whether the disclosure is to occur outside the United States.

### **FOREIGN TRADE ZONES**

Foreign trade zones are areas in or adjacent to ports of entry that are treated as outside the customs territory of the United States. In order to expedite and encourage trade, goods admitted to a foreign trade zone generally are not subject to the customs laws of the United States until the goods are ready to be imported into the United States or exported. These foreign trade zones are isolated, enclosed, and policed areas which contain facilities for the handling, storing, manufacturing, exhibiting and reshipment of merchandise. Foreign trade zones are created pursuant to the Foreign Trade Zones Act, 19 U.S.C. §§ 81a-u, and are operated as public utilities under the supervision of the Foreign Trade Zones Board. Under the Foreign Trade Zones Act, the Board is authorized to grant to public or private corporations the privilege of establishing a zone. Regulations covering the establishment and operation of foreign trade zones are issued by the Foreign Trade Zones Board, while United States Customs Service regulations cover the customs requirements applicable to the entry of goods into and the removal of goods from these zones.

### **ANTI-DUMPING LAW**

The United States anti-dumping law, as codified in 19 U.S.C. §§ 1671-1677, provides that if a foreign manufacturer sells goods in the United States at less than fair value, and such sales cause or threaten material injury to an existing United States industry or materially retard the establishment of a United States industry, an additional duty in an amount equal to the “dumping margin” is to be imposed upon the imports of that product from the foreign country where such goods originated. Under the statute, sales are deemed to be made at less than fair value if they are sold at a price that is less than their “foreign market value” (which generally is equivalent to the amount charged for the goods in the home market). The dumping margin is equal to the amount by which the foreign market value exceeds the United States price.

The Secretary of Commerce is charged with determining whether merchandise is being sold at less than fair market value in the United States. The International Trade Commission makes the determination of whether such sales cause or threaten material injury to a U.S. industry.

### **STATE CONSIDERATIONS**

#### **UTAH ANTITRUST LAWS**

The Utah antitrust statute, Utah Code Ann. § 76-10-3101 et seq., closely resembles the federal Sherman Act in both language and intent, prohibiting contracts, combinations, or conspiracies in restraint of trade or commerce. With limited exceptions, Utah law also makes it unlawful for any person



to monopolize, or attempt to monopolize, or combine or conspire to monopolize, trade or commerce. “Attempt to monopolize” means action taken without a legitimate business purpose and with specific intent to destroy competition or control prices to substantially lessen competition, or create a monopoly, where there exists a dangerous possibility of creating a monopoly. Exceptions include certain activities by qualifying public utilities, insurers, securities dealers, banking institutions, savings and loans, municipalities, and emergency medical service providers. Utah’s antitrust laws do not forbid the existence and operation of labor, agricultural, or horticultural organizations that are instituted for the purpose of mutual help and do not have capital stock and are not conducted for profit.

The Attorney General may enforce state antitrust laws by either civil or criminal actions and has authority to investigate suspected violations of the antitrust laws. Private actions may also be brought by those injured or threatened with injury for injunctive relief and damages. A successful plaintiff is entitled to an award of three times the amount of damages sustained, plus costs and attorney’s fees, provided that such an award will not cause the insolvency of the defendant. However, damages cannot be recovered from any political subdivision or from its officials and employees in their personal or official capacity.

#### **UTAH UNFAIR PRACTICES ACT**

The Utah Unfair Practices Act, Utah Code Ann. § 13-5-1, et seq., like Utah’s antitrust laws, also broadly declares all unfair methods of competition in commerce to be unlawful. More specifically, the Act prohibits certain price discriminations, discrimination between purchasers, below-cost sales, and the advertising of goods that one is not prepared to supply. The Unfair Practices Act does not prohibit price differentials based only on differences in cost of manufacture, sale, or delivery resulting from different methods or quantities in which commodities are sold or delivered. Price changes that are the result of changing conditions affecting the market of the goods concerned are also not prohibited under the Act. Violators may be enjoined or subject to criminal penalties. An injured party may maintain a civil action for violations of the Act, even absent actual damages.

#### **REGULATION OF BUSINESS OPPORTUNITIES AND FRANCHISES**

Purveyors of “assisted marketing plans” must file detailed disclosures with the Utah Division of Consumer Protection before commencing business in the state. However, franchises, as defined by Federal Trade Commission rules, are exempt from these disclosure requirements provided that franchisors file a notice of exemption with the state prior to offering to sell any franchise to a Utah resident or locating in the state. The exemption must be renewed yearly.

#### **LICENSING AND REGULATORY REQUIREMENTS**

All businesses must obtain a business license from the local city or county in which business will be conducted. A business should also obtain a federal Employer Identification Number from the Internal Revenue Service and a state Sales and Use Tax License from the Utah State Tax Commission before applying for a business license. Obtaining a business license may require the approvals from planning and zoning, building and housing, health, police or sheriff, and fire officials.

#### **RESTRICTIONS ON SPECIFIC PROFESSIONS**

A license or permit must be obtained from the state before engaging in a wide variety of professions and occupations. The department responsible for licensing varies depending on the type of occupation. The licensing requirements and qualifications also vary with each occupation.



Some of the many types of occupations which must be licensed by the state include alcoholic beverage purveyors, attorneys, automated dialing companies, banks, contractors, employment agencies, fundraisers, grocery stores, hospitals, insurance agents, investment advisers, mortgage brokers, motor vehicle dealers, real estate agents, and telemarketers.

#### **UTAH CONSUMER PROTECTION LAWS**

The Utah Consumer Sales Practices Act, Utah Code Ann. § 13-11-1, et seq., prohibits deceptive acts or practices by suppliers in connection with a consumer transaction, such as intentional misrepresentations about goods or services. Some of the deceptive acts prohibited by the Act include knowingly or intentionally indicating a product has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that it does not actually have, indicating a product is of a particular quality or standard if it is not, or indicating a product is available to consumers for some reason that does not exist. This Act also provides consumers with the right to cancel a direct solicitation sale within three business days and requires solicitors to notify purchasers of that right. Civil actions, and even class actions, may be maintained by a consumer to remedy violations.

The Telephone and Facsimile Solicitation Act, Utah Code Ann. §13-25a-101, et seq., prohibits the operation of automated dialing systems with recorded messages to make a telephone solicitation, and prohibits the transmitting of advertisements by fax machine without the prior express consent of the person solicited, unless that person is one with whom the solicitor has established a prior business relationship. Telephone solicitations may not be made before 8:00 a.m. or after 9:00 p.m., on a Sunday, or on a legal holiday, without the prior express consent of the person solicited. Telephone solicitors must identify themselves, their business, and their purpose for calling. They also must discontinue the solicitation if the person being solicited gives a negative response at any time during the telephone call. A telephone solicitor may not withhold display of the solicitor's number from caller identification equipment.

Under the Protection of Personal Information Act, Utah Code Ann. § 13-44-101, et seq., businesses that maintain personal information must observe reasonable procedures to safeguard that personal information, must investigate any breach of system security relating to personal information, and must notify the affected individuals if the information is reasonably likely to be misused for identify theft or fraud purposes. Safeguarding personal information under this Act includes the duty to prevent unlawful use or disclosure of personal information and to destroy records containing personal information that are not retained. Utah law also expressly prohibits deceptive, false, or misleading advertising.

Generally, parties to a lawful loan transaction may agree upon any rate of interest. Utah law, however, provides that knowingly engaging in or directly or indirectly providing financing for the business of making loans at a higher rate of interest or consideration than authorized by law is criminal usury. Criminal usury is a third degree felony. Furthermore, where a consumer is involved, a transaction may be deemed unconscionable and thus unenforceable, even if usury is not triggered.

#### **WARRANTIES**

With respect to the sale of goods, Utah law provides for warranties of title, merchantability, fitness for a particular purpose, and conformity with promises, descriptions, and samples. A warranty can be excluded or modified only by specific language or circumstances as provided by statute.



## Chapter IV: Taxation

### TAXATION FEDERAL TAXATION

#### FEDERAL INCOME TAXATION

Federal income taxes are not affected by where a business chooses to locate in the United States. There are various methods of controlling the amount of the United States income tax payable, and many of these apply to domestic corporations as well as foreign-owned corporations or foreign individuals.

#### PERSONAL INCOME TAX

Individuals are subject to United States income tax on their worldwide income if they are United States citizens or resident aliens. Resident alien status is determined under a set of complex rules. Any individual, who is not a United States citizen, does not wish to be taxed as such, and who plans to spend a substantial amount of time in the United States should pay careful attention to these rules. Currently, the highest marginal United States individual income tax rate is 37 percent for ordinary income and 20 percent for capital gains and dividend income.<sup>3</sup> A nonresident alien generally is subject to tax on dividends from United States corporations, as discussed below.

#### EMPLOYMENT TAXES

Under the Federal Insurance Contributions Act, employers are taxed on a portion of wages paid to employees. The amount paid by the employer may not be deducted from the wages of its employees.

### STATE TAXATION

#### INDIVIDUAL INCOME TAXATION

Individuals domiciled within the State of Utah are subject to payment of a state income tax. All income received during the period of domicile is taxable regardless of the source of income. Utah's income tax system is tied to the federal tax system. In addition, nonresident individuals must pay Utah income tax on all income received from Utah sources. Individuals may elect to take the standard deduction or may itemize deductions. One-half of the federal tax paid may be deducted. Various tax credits are also available, including credits for research activities, investments in renewable energy, certain donations, and other activities. In 2008, Utah adopted a "single rate" of 5 percent of taxable income. The 2018 Utah Legislature lowered the state individual income tax rate from 5 percent to 4.95 percent.

#### CORPORATE FRANCHISE AND INCOME TAX

Domestic corporations and foreign corporations doing business in the State of Utah must file and pay a corporate franchise tax equal to the greater of \$100 and 4.95 percent of taxable income.

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<sup>3</sup> Rob Berger, *The New 2018 Federal Income Tax Brackets & Rates*, FORBES (Dec. 17, 2017), <https://www.forbes.com/sites/robertberger/2017/12/17/the-new-2018-federal-income-tax-brackets-rates/#4bb56934292a>. Bill Bischoff, *Your Simple Guide to the New Capital Gains Tax Rates*, MARKET WATCH (Apr. 16, 2018), <https://www.marketwatch.com/story/your-simple-guide-to-the-new-capital-gains-tax-rates-2018-04-16>.



“Doing business” includes owning, renting, or leasing real or personal property in the State of Utah. The corporate franchise tax must be paid in each calendar or fiscal year, even if no profit was made.

Foreign corporations not subject to the corporate franchise tax must pay corporate income tax in Utah if they derive income from Utah sources, regardless of whether they are qualified to do business in Utah or have a place of business in Utah. The corporate income tax rate is the same as the corporate franchise tax rate.

Corporations with a Utah tax liability of \$3,000 or more in the current or past tax year must make quarterly estimated tax payments. The quarterly prepayments are due in four equal payments on the 15th day of the 4th, 6th, 9th, and 12th month of the corporation’s taxable year. The quarterly prepayment amounts are based on 90% of the current year’s tax or 100% of the prior year’s tax.<sup>4</sup>

### **PROPERTY TAX**

Utah counties may assess a tax on both real and tangible personal property used in business located within the county. However, certain property is exempt from taxation, including property used exclusively for religious, charitable, or educational purposes. Real property includes land, buildings, and improvements, and is generally taxed based on 100 percent of the fair market value of the property based on status, location, cost, comparable sales, and income. Personal property used in business includes items such as machinery, equipment, furnishings, and fixtures, and is typically taxed based on a percentage of acquisition cost according to valuation schedules. Businesses must file signed statements with the county assessor each year estimating the value of their taxable tangible personal property. Individuals must also pay property tax on certain personal use property, such as motor vehicles.<sup>5</sup>

### **SALES AND USE TAX**

Utah imposes a sales tax on the rental or retail sale of tangible personal property and the charges for certain services. The amount of sales tax imposed varies from local jurisdiction to jurisdiction but is generally between six and seven percent of the sales price. Sales tax is collected by the vendor at the point of sale. The vendor must remit the tax collected to the Utah State Tax Commission on an annual, quarterly, or monthly basis, depending on the amount collected by the vendor. Vendors filing on a monthly basis are eligible for a discount. All retailers must have a sales tax license and related account number to do business in the state.

The state also imposes a use tax on the rental or purchase of tangible personal property outside of the state that is stored, used, or consumed within the state. The purchaser is responsible for payment of the tax. Use tax is reported on the income tax return. The use tax rate is the same as the sales tax rate.

Utah is a member of the streamlined Sales & Use Tax Agreement, an interstate effort to simplify and modernize the sales and use tax system.

### **EMPLOYMENT TAXES**

Utah requires all employers to register and pay an unemployment insurance contribution. The rate is determined each year by formula and is generally paid on a quarterly basis. Employers may not deduct the amount paid from the wages of its employees.

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<sup>4</sup> *Official Tax Information for the State of Utah*, UTAH STATE TAX COMMISSION, <https://tax.utah.gov/>

<sup>5</sup> *Property Taxes*, Utah State Tax Commission, <https://propertytax.utah.gov/personal/valuation-guidelines#other>.





## OTHER TAXES

Utah imposes a tax on the purchase and sale of cigarettes and tobacco, and on the importation or manufacture of beer, and on gasoline and special fuels. So-called tourism taxes may also be imposed by local governments on various industries, such as motor vehicle rentals, hotels, restaurants, and other tourism-related businesses.

### STATE TAX STRUCTURE SUMMARY TABLES

TITLE AND LEGAL CITATION	BASIS OF TAXES	RATES	ALLOCATION OR USE
General Property 59-2-201 to 1372	State and locally assessed commercial and personal property used in business at 100% and locally assessed primary residential property at 55% of "fair market value." Farmland assessed on a per acre basis according to agricultural value.	Rate varies in each local area. During 2005, total rate averaged <b>1.35% of assessed property valuation.</b>  Motor Vehicle Fee based on age of vehicle: less than 3 years \$150; 3 to 5 years \$110, 6 to 8 years \$80, 9 to 11 years \$50, 12 or more years \$10.	School districts, municipalities, counties, and special service districts.
State Sales and Use 59-12-101 to 120  59-12-1201	Retail sales or use of tangible personal property, admissions, meals, services on personal property, hotel, motel, laundry and dry cleaning.  Motor Vehicle Rental Tax	Please see the following link to determine the sales and use tax rate in each city: <a href="https://tax.utah.gov/sales/rates">https://tax.utah.gov/sales/rates</a>	To General Fund.

TITLE AND LEGAL CITATION	BASIS OF TAXES	RATES	ALLOCATION OR USE
Local Option Sales and Use:			
59-12-201 to 205	1. County, City	1. 1% of purchase price;	1. Returned to local unit according to formula.
59-12-301 to 302 & 901 to 902	2. Transient Room	2. Tax rate varies from one location to another and may change quarterly. For more information see: <a href="https://tax.utah.gov/sales/rates">https://tax.utah.gov/sales/rates</a>	2. To county or city where collected.
59-12-401 to 402	3. Resort Communities	3. Up to 1.6% of purchase price additional;	3. To city where collected.
59-12-2213 to 2215	4. Public Transit	4. Up to 0.30%;	4. To county for Transit District.

59-12-603 and 901	5. Tourism, Recreation & Convention Facilities	5. Up to 4% on car rentals, up to 1% on prepared restaurant foods and beverages, up to 0.5% on room rentals;	5. Returned to local unit for tourism promotion & convention facilities development.
59-12-701 to 704	6. Botanical, Cultural & Zoological	6. 0.10% of purchase price;	6. To county organizations by formula.
59-12-801 to 804	7. Rural County Health Care Facility Tax	7. Up to 1% of purchase price;	7. To county or city for hospitals.
59-12-2218	8. Highway Tax	8. Up to 0.25% in municipalities without a transit district;	8. To municipality for highway maintenance.
59-12-1101 to 1102	9. County Option Sales and Use	9. 0.25% if one-time property tax reduction taken;	9. To the county.
59-12-1301 to 1302	10. Town Option Sales and Use	10. 1% if town had a gross receipts tax before 1/1/96.	10. To the town.
<b>TOTAL SALES TAX</b>		<b>5.75% - 8.10%</b>	

TITLE AND LEGAL CITATION	BASIS OF TAXES	RATES	ALLOCATION OR USE
Municipal Energy Sales and Use 10-1-203	Out-of-state purchases of taxable energy within a municipality.	Up to 6%	To the municipality.
Individual Income 59-10-104	State taxable income	Flat Rate of 4.95%	State General Fund
Corporation Franchise 59-7-101 to 805	Net income allocable to State (special gross receipts tax for certain exempt corporations).	4.95% of net taxable income or \$100, whichever is greater.	State General Fund.

TITLE AND LEGAL CITATION	BASIS OF TAXES	RATES	ALLOCATION OR USE
Gross Receipts 59-8-101 to 106	Gross receipts tax on certain corporations not required to pay corporate franchise or income tax act.	Gross Receipts Rate Under \$10 million None; \$10 mil to \$500 mil 0.6250%; \$500 mil to \$1 billion 0.9375%; More than \$1 billion 1.2500%	To uniform school fund distribution.
Unemployment Insurance Tax 35a-4-101 to 508	First \$24,000 of wages paid to each employee during the calendar year, based on a benefit ratio charge-back experience rating system.	0.1% to 7.1% of taxable payroll depending on unemployment experience.	To unemployment compensation fund; used to pay unemployment benefits.



Motor Fuel 59-13-201 to 212	Gallons of motor fuel sold or used.	16.5% of the statewide "average rack price" of a gallon of motor fuel. Subject to some exceptions.	To transportation fund 75% for state highways and 25% for local roads.
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TITLE AND LEGAL CITATION	BASIS OF TAXES	RATES	ALLOCATION OR USE
Aviation Fuel 59-13-401 to 403	Gallons of fuel for airplane use.	9 cents per gallon (4 cents per gallon if used by a federally certified air carrier.)	25% for aeronautics administration. 75% to airports.
Special Fuel 59-13-301 to 320	Gallons of fuel used to propel motor vehicles except fuel subject to motor fuel tax law.	Variable depending on type of fuel. Average rate is 16.5% per gallon of special fuel.	To transportation fund 75% for state highways and 25% for local roads.
Motor Vehicle Registration Fee 41-1a-1206 to 1207	Motorcycles, private autos, house trailers, manufacturers, transporters, dealers, and wreckers - flat fees. Motor vehicles, trailers, and semi-trailers used for transportation of passengers or property unladen weight of vehicle.	Private Motor Vehicles \$44.00; motorcycles - \$46.00; small commercial trailers (under 750 lbs)- \$28.50; trailers over 750 lbs.- \$31.00; farm trucks up to 12,000 lbs. \$53.00; farm trucks over 12,000 lbs. \$53.00 and \$9.00 for each additional 2,000 lbs. up to 80,000 lbs.; Vehicles over 12,000 lbs. - \$69.50 plus \$19.00 for each additional 2,000 lbs. over 14,000 lbs.	To transportation fund 75% for state highways and 25% for local roads.

TITLE AND LEGAL CITATION	BASIS OF TAXES	RATES	ALLOCATION OR USE
Drivers' License Fee 53-3-105 to 106	Operators' & Commercial Drivers' License	Operators' License \$32 for a class D license application; \$32 for a renewal of a class D license.  Commercial Driver's License written test \$52, skills test \$78, \$9 each CDL endorsement	To transportation fund 75% for state highways and 25% for local roads.
Automobile Driver Education 41-1a-1204 to 1205	Fee is charged upon each motor vehicle registered-collected at time of registration.	\$2.50	For driver education program.
Nonresident Commercial Vehicle Registration 41-1a-301	Interstate commercial vehicles operating in Utah must pay a fee based on the number of miles traveled in a jurisdiction divided by total miles traveled in all jurisdictions.	Proportional part of registration fee for commercial vehicles (must also pay proportional part of property tax on vehicles.)	To transportation fund. Allocated for state for local road purposes.

TITLE AND LEGAL CITATION	BASIS OF TAXES	RATES	ALLOCATION OR USE
Mining Severance Tax 59-5-202	Gross value of metalliferous ore sold or disposed of - first \$50,000 of revenue exempt.	2.6% of taxable value.	To general fund, portion of revenue deposited in permanent school fund.
Severance Tax on Oil, Gas and Mining 59-5-102	Gross amount received or gross value of gas and oil sold - first \$50,000 of revenue exempt.	3% to 5% depending upon the price of oil or natural gas per barrel or MCF, respectively) 4% on natural gas liquids.	To general fund.
Oil and Gas Conservation Fee 40-6-14 to 14.5	Oil and gas produced, saved, sold or transported from the production site.	0.2% of the value at the well.	To general fund for the Division of Oil, Gas and Mining.
Cigarette and tobacco 59-14-204 and 302	Individual cigarettes	8.5 cents on each cigarette not weighing more than three pounds per thousand cigarettes; 9.963 cents on each cigarette weighing in excess of three pounds per thousand cigarettes.	\$3,150,000 to the Department of Health; \$4,800,000 to the University of Utah Health Sciences Center; remainder to general fund.

TITLE AND LEGAL CITATION	BASIS OF TAXES	RATES	ALLOCATION OR USE
Insurance Premiums 59-9-101 to 106	Total premiums less returned premiums, reinsurance premiums, and dividends paid.	2.25% with credits for property taxes and examination fees paid in Utah OR 1. For Title Insurance – .45%; 2. For Motor Vehicle Insurance other than for physical damage – an additional .01% (2.26% total); 3. For Worker’s Compensation Insurance – equal to or greater than 1%, but no more than 5.75%.	To general fund 50% of tax on fire insurance premium and 10% tax on life insurance premiums for firemen’s pensions.
Inheritance 59-11-101 to 115	Taxable estates as defined by the IRS.	Amount of federal credit allowed against Federal Estate Tax as determined on Federal Form 706.	To general fund.
Beer Tax 59-15-101 to 109	Barrels of beer (consisting of 31 gallons) sold, imported, distributed, or consumed in Utah.	\$11 per 31-gallon barrel of beer manufactured or imported before July 1, 2003. \$12.80 per 31-gallon barrel for beer manufactured or imported on or after July 1, 2003.	To general fund.
Emergency Services Telephone Charge 69-2-402	Each telephone access line subject to the 911 emergency services charge.	\$0.71 per month	University of Utah Poison Control Center; statewide 911 emergency service fund; local (municipal or county) emergency service fund.

## **CHAPTER V LABOR AND EMPLOYMENT**

### **LABOR AND EMPLOYMENT FEDERAL CONSIDERATIONS**

#### **IMMIGRATION LAW**

With the globalization of world markets, employers located in the United States often seek to employ foreign personnel. A variety of permanent and temporary visas are available depending on various factors such as the job proposed for the alien, the alien's qualifications, and the relationship between the United States employer and the foreign employer. Permanent residents are authorized to work where and for whom they wish. Temporary visa holders have authorization to remain in the United States for a temporary time, and often the employment authorization is limited to specific employers, jobs, and even specific work sites.

#### **PERMANENT RESIDENCY (THE "GREEN CARD")**

Permanent residency is most commonly based on family relationships, such as marriage to a United States citizen or on an offer of employment. Permanent residence gained through employment often involves a time-consuming process that can take several years to obtain. Therefore, employers considering the permanent residence avenue for an alien employee should ascertain the requirements for the immigration filing prior to bringing the employee to the United States.

#### **TEMPORARY VISAS**

The following are the most commonly used temporary visas:

##### **E-1 TREATY TRADER AND E-2 TREATY INVESTOR VISAS**

These are temporary visas for persons from countries having a treaty relationship with the United States in managerial, executive, or essential skills capacities. The persons must individually qualify for, or be employed by companies that engage in, substantial international trade with or investment in the United States. E visas are commonly used to transfer managers, executives, or technicians with specialized knowledge about the proprietary processes or practices of a foreign company to assist the company at its United States location. E visa holders may reside in the United States as long as they maintain their status with the employer.

##### **H-1B SPECIALTY OCCUPATION VISAS**

H-1B visas are for fashion models of distinguished merit and ability, and for persons in specialty occupations that require at least a bachelor's degree. Examples of such professionals are engineers, architects, accountants, and, on occasion, business persons. Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years. H-1B visas are employer and job-specific, but workers may petition to change employers.



### **L-1 INTRACOMPANY TRANSFEREE VISAS**

Most often utilized in the transfer of executives, managers, or persons with specialized knowledge from international companies to United States-related companies, L-1 visas provide employer-specific work authorization for an initial one- to three-year period with possible extensions up to a total of seven years in certain categories. As in the case of certain E visa capacities, some L visa managers or executives may qualify for a shortcut in any permanent residence filings.

### **B-1 BUSINESS VISITORS AND B-2 VISITORS FOR PLEASURE**

These visas are commonly utilized for brief visits to the United States of six months or less. Neither visa authorizes employment in the United States. B-1 business visitors are often sent by their overseas employers to negotiate contracts, to attend business conferences or board meetings, or to fill contractual obligations such as repairing equipment for brief periods in the United States. B-1 and B-2 visitors cannot be on the United States payroll or receive United States source remuneration.

### **TN PROFESSIONALS**

Under the North American Free Trade Agreement, certain Canadians and Mexicans who qualify and fill specifically defined professional positions can qualify for TN status. Such professions include some medical/allied health professionals, engineers, computer systems analysts, hotel managers, and management consultants. TN visa holders are granted renewable one-year stays for specific employers, and are not allowed other employment without prior USCIS approval. Particularly with regard to Canadians, paperwork required for filing these requests is minimal.

### **F-1 ACADEMIC STUDENT VISAS INCLUDING PRACTICAL TRAINING**

Often, foreign students come to the United States in F-1 status for academic training or M-1 status for vocational training. Students in F-1 status can often engage, within certain constraints, in on-campus employment and/or off-campus curricular or optional practical training for limited periods of time. Vocational students cannot obtain curricular work authorization but may receive some post-completion practical training in limited instances.

### **J EXCHANGE VISITOR VISAS**

These visas are for academic students, scholars, researchers, and teachers traveling to the United States to participate in an approved exchange program. Training, not employment, is authorized. Potential employers should note that some J exchange visitors and their dependents are subject to a two- year foreign residence requirement abroad before being allowed to change status and remain in the United States.

### **O-1 AND O-2 VISAS**

These visas are for persons with extraordinary abilities in the sciences, arts, education, business, or athletics and who have sustained national or international acclaim. Persons who assist in such O-1 artistic or athletic performances are also included in this category.

### **P-1 ATHLETES/GROUP ENTERTAINERS AND P-2 RECIPROCAL EXCHANGE VISITOR VISAS**

These temporary visas allow certain athletes who compete at internationally recognized levels, or entertainment groups that have been recognized internationally as outstanding for a substantial period of time, to come to the United States and work. Essential support personnel can also be included in this category.



## **NON-IMMIGRANT VISA CATEGORIES**

There are a number of other non-immigrant visas categories that may apply to specific desired entries. When planning to bring foreign personnel to the United States, employers should allow several months for processing by U.S. Citizenship and Immigration Services, as well as by the Department of State and the Department of Labor. Furthermore, employers should be aware that certain corporate changes, including stock or asset sales, job position restructuring, and changes in job duties, may dramatically affect or invalidate the employment authorization of foreign employees.

## **FEDERAL LABOR AND EMPLOYMENT STATUTES**

### **AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (“ADEA”)**

The ADEA forbids discrimination in employment decisions based on age as to employees age 40 and over. The ADEA applies to employers engaged in interstate commerce who have had twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

### **AMERICANS WITH DISABILITIES ACT OF 1990 (“ADA”)**

Title I of the ADA prohibits discrimination in employment based on the existence of a disability, record of disability, or perception that a person is disabled. The ADA also requires that employers take steps to reasonably accommodate disabled individuals in the workplace. Furthermore, businesses that serve the public are required to avoid discrimination and provide certain accommodations. The ADA applies to employers engaged in interstate commerce who have had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

### **CONSUMER CREDIT PROTECTION ACT (“CCPA”)**

The CCPA prohibits employers from terminating employees on the basis of garnishments for any one debt. It also limits the amount of wages which may be garnished in any week.

### **EMPLOYEE POLYGRAPH PROTECTION ACT (“EPPA”)**

The EPPA greatly restricts polygraph testing of job applicants and employees. In the limited instances in which a polygraph test is allowed, the EPPA strictly controls how such tests may be administered and how the results of the tests may be used. The Act applies to most private employers engaged in interstate commerce.

### **EQUAL PAY ACT (“EPA”)**

The EPA, part of the Fair Labor Standards Act, prohibits pay discrimination among employees on the basis of sex. Specifically, the EPA prohibits employers from paying employees of one gender more than employees of the other gender for equal work on jobs that require equal skill, effort, and responsibility, and which are performed under similar working conditions.

### **FAIR LABOR STANDARDS ACT (“FLSA”)**

The FLSA establishes federal minimum wage and overtime requirements, imposes restrictions on child labor, and sets forth certain record keeping requirements on employers engaged in industries affecting interstate commerce, regardless of the number of employees the employer has.



## **FAMILY AND MEDICAL LEAVE ACT (“FMLA”)**

The FMLA requires covered employers to provide eligible employees with up to twelve weeks of unpaid leave within any twelve-month period for the birth of a child, the placement of a child for adoption or foster care, or for the serious health condition of the employee or the spouse, parent, or child of the employee. The FMLA permits spouses, children, or next of kin to take up to twenty-six weeks of leave to care for a member of the Armed Forces who is undergoing treatment or therapy for a serious injury or illness. The FMLA also requires covered employers to provide employees with continued health benefits during FMLA leave, to restore employees returning from FMLA leave to the same or an equivalent position they occupied prior to taking FMLA leave, and to appropriately notify employees of their rights and responsibilities under the FMLA. The FMLA applies to all employers engaged in commerce where the employer employs fifty or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

## **FEDERAL CONTRACTORS**

Federal contractors or subcontractors, depending on the type and size of their contracts, must comply with the laws and regulations enforced by the Office of Federal Contract Compliance Programs (“OFCCP”), including three equal employment opportunity laws: Executive Order 11246, which prohibits discrimination and requires affirmative action with regard to race, sex, color, religion or national origin; the Rehabilitation Act of 1973, which prohibits discrimination and requires affirmative action with regard to qualified individuals with a disability; and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 as amended by the Jobs for Veterans Act, which prohibits discrimination against certain veterans and requires affirmative action in the employment of such veterans. Federal contractors are required to use the E-Verify System to verify the employment eligibility of their prospective employees.

## **IMMIGRATION REFORM AND CONTROL ACT (“IRCA”)**

IRCA prohibits the employment of persons who are not legally authorized to work in the United States or employment in an employment classification they are not authorized to fill. IRCA requires employers to certify (using the I-9 form), within three days of employment, the identity and eligibility to work of all employees hired. Employers are subject to significant fines and penalties for failure to comply with documentation and record keeping requirements under IRCA, as well as for hiring unauthorized workers or for discriminating against persons on the basis of national origin or citizenship including persons who appear or sound “foreign”.

## **EMPLOYEE BENEFITS**

### **EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (“ERISA”)**

ERISA governs implementation and maintenance of most types of employee benefit plans, including most retirement programs, life and disability insurance programs, medical reimbursement plans, health care plans, and severance plans. ERISA sets out a detailed regulatory scheme mandating certain reporting and disclosure requirements, setting forth fiduciary obligations and, in most types of retirement plans, specific coverage, vesting, and funding requirements. ERISA generally preempts state laws governing employee plans and arrangements.



## **CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (“COBRA”)**

COBRA requires employers to make available to terminated employees continuing coverage under medical reimbursement and health care plans at the employee’s cost. The usual period for which this coverage must be continued is eighteen months. COBRA contains very specific procedures for notifying terminated employees of their COBRA rights.

## **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (“HIPAA”)**

HIPAA establishes privacy protections prohibiting the unauthorized disclosure of medical information. It also establishes procedures as to the “transfer” of health insurance from one employer to another and includes provisions regarding restrictions on preexisting conditions, special enrollment rights, and protections against discrimination.

## **OTHER FEDERAL REGULATIONS**

Many employers operate in industries that are regulated by federal agencies. For example, the Department of Transportation requires employers to drug test employees who drive motor vehicles weighing more than 26,000 pounds. Employers in regulated industries must be aware of any requirements imposed by federal or state regulations.

## **NATIONAL LABOR RELATIONS ACT AND LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT**

These statutes set forth the guidelines governing labor-management relations. They apply to all employers who are engaged in any industry in or affecting interstate commerce, regardless of the number of employees. Employers who operate under the Railway Labor Act are not subject to these Acts.

## **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (“OSHA”)**

OSHA is the statute that sets forth the mechanism for establishing and enforcing safety regulations in the workplace. OSHA requires employers to keep a log of certain illnesses and injuries, to report certain deaths and multiple hospitalizations, and to post supplementary records on an annual basis. OSHA also prohibits employers from discharging employees who refuse to do a job that, by their reasonable apprehension, places them at risk of injury or exposes them to a hazardous workplace condition. It applies to all employers who are engaged in an industry affecting commerce, regardless of the number of employees.

## **SARBANES-OXLEY ACT OF 2002**

This Act requires public companies to report on internal controls, disclose certain information, and certify the correctness of financial statements. It also prohibits public companies from discriminating or retaliating against employees who “blow the whistle” concerning the substantive matters covered by the Act.

## **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE CIVIL RIGHTS ACT OF 1991, (“TITLE VII”)**

Title VII is the broad civil rights statute that forbids discrimination in hiring, firing, and the terms and conditions of employment, based on race, color, religion, gender, pregnancy, and national origin. It applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

## **UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT RIGHTS ACT (“USERRA”)**

USERRA prohibits employers from discriminating against persons because of past, present, or future membership in a uniformed service. It also requires employers to provide returning employees with retraining opportunities; requires employers to make available continued health care and pension benefits for a covered employee during leave; and provides additional protections for disabled veterans.

## **WHISTLEBLOWER PROTECTION**

In addition to the Sarbanes-Oxley Act, federal law prohibits retaliation against employees who report violations of a number of additional federal statutes, including occupational, environmental, and nuclear safety laws, transportation industry laws and consumer and investor protection laws. Claims of whistleblower retaliation are generally investigated by OSHA and adjudicated at the Department of Labor and by the federal courts.

## **WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT (“WARN ACT”)**

The WARN Act requires covered employers to give sixty-days notice to their employees of plant closings or mass layoffs. The WARN Act applies to all businesses that employ the equivalent of 100 or more full-time employees.

## **STATE CONSIDERATIONS**

### **UTAH LABOR AND EMPLOYMENT STATUTES**

#### **UTAH ANTIDISCRIMINATION ACT (“UADA”)**

This Act applies to any employer with fifteen or more employees. The UADA prohibits discrimination based on race, color, sex, age (if over forty), religion, national origin, disability, pregnancy, childbirth, or pregnancy-related conditions, sexual orientation, gender identity, and expression of political or personal opinions.

#### **UTAH MINIMUM WAGE ACT (“UMWA”)**

The UMWA applies to employees not covered by federal minimum wage standards. As of July 24, 2009, the Utah state minimum wage is \$7.25 per hour. However, minors under the age of 18 may be paid \$4.25 per hour for the first 90 days of employment. Tipped employees may be paid \$2.13 per hour so long as the tips they earn bring them up to minimum wage. There are certain exemptions from state minimum wage coverage.

#### **UTAH PAYMENT OF WAGES ACT**

The Utah Payment of Wages Act establishes requirements for the payment of wages to employees both during employment and upon termination of employment. Among other things, the statute establishes an employer’s responsibilities regarding paydays, electronic payroll deposits, lawful deductions from paychecks, payroll records, and final paychecks. The statute also governs wage disputes, contains provisions for enforcement of the statute by the Utah Antidiscrimination and Labor Division, and provides for a private right of action by employees to recover unpaid or improperly withheld or deducted wages as well as daily accruing civil penalties. An employer who violates the act may also be guilty of a misdemeanor.

## **CHILD LABOR**

Under Utah law, minors under 18 years of age generally may not be employed or permitted to work in any hazardous occupation. Minors under 16 years of age may not work during school hours without permission by appropriate school authorities, and may not work before or after school in excess of four hours a day; in excess of eight hours in any 24-hour period; more than 40 hours per week; or before 5:00 a.m. or after 9:30 p.m. unless the next day is not a school day. Utah law also provides for the limited employment of minors under the age of 16 in various categories of work, broken down by specific age groups. An employer that violates Utah's minimum wage laws with respect to a minor is subject to civil and criminal administrative enforcement and private civil actions by or on behalf of aggrieved minors.

## **DRUG TESTING**

The Utah Drug and Alcohol Testing Act contains strict standards and requirements as to drug and alcohol testing by employers. Generally speaking, employers may test employees or prospective employees for the presence of drugs and alcohol as a condition of hiring or continued employment, provided that employers and management submit to testing on a periodic basis. Testing must be conducted at the expense of the employer, must be done during or immediately after the regular work period of current employees, and is considered work time for the purposes of compensation and benefits. Testing must be conducted within the terms of a written policy of the employer that has been previously distributed to employees and which is available for review by prospective employees. Testing must comply with the employer's written policies and stringent statutory standards. An employer's drug testing policy may require testing to investigate possible impairment by an individual employee; to investigate workplace accidents or incidents of theft; to maintain productivity and quality; or to maintain security of property, information, and the workplace. Information obtained through testing programs is considered confidential information.

## **POST-EMPLOYMENT RESTRICTIONS**

Utah limits the temporal breadth of a post-employment restorative covenant to one year. Employers who seek to enforce a covenant in violation of this one (1) year must pay the legal fees and other damages incurred by the employee.

## **RESTRICTIONS ON GENETIC TESTING**

With respect to matters related to genetic testing and private genetic information, employers must comply with applicable provisions of the Utah Genetic Testing Privacy Act.

## **WORKPLACE SAFETY**

The Utah Occupational Safety and Health Act requires employers to provide a safe workplace, free from recognized hazards that are likely to cause death or physical harm to employees, and which complies with safety and health standards and regulations promulgated by the Utah Labor Commission, Division of Occupational Safety and Health. The Act applies to all private employers with one or more workers and all state and local government agencies, school districts, and special service units. The Act incorporates federal standards for workplace safety and employer reporting and record keeping of injuries, exposures, and illnesses, and provides additional requirements for the drilling industry, farming operations, hazardous materials, materials handling and storage, construction activities, and a number of additional occupational activities, including such activities as:

- crushing, screening, and grinding equipment



- window cleaning
- house and building moving
- industrial railroads
- livestock butchering and carcass handling
- motor vehicle transportation of workers
- hot metallurgical operations
- elevators, escalators, aerial trams, manlifts, workers' hoists, and the like
- filters and centrifuges
- food processing
- boilers and pressure vessels

These additional requirements are found in the Utah Administrative Code R614-6.

#### **WORKERS' COMPENSATION**

With few exceptions, the Utah Workers Compensation Act ("UWCA") requires that an employer who employs one or more workers or operatives regularly in the same business must have workers' compensation insurance covering every employee. The UWCA requires an employer to report injuries or work-related illnesses to the Utah Labor Commission within seven days of being notified of such injury or illness. Employees suffering a job-related injury or illness are paid a percentage of their wages while unable to work, with a maximum limit, and an additional amount for any permanent impairment or disability. Medical bills are also covered by workers' compensation. Employers complying with the workers' compensation requirements are generally immune from any liability or damages resulting from job-related injuries or illnesses.

#### **UNEMPLOYMENT COMPENSATION**

The Utah Employment Security Act requires employers to make quarterly contributions and reports to the Utah Department of Workforce Services. Money from the fund is paid to workers who are unemployed through no fault of their own. To become eligible for benefits from the fund, unemployed workers must make a claim for benefits, register for work at an employment office, be able and available to work, be actively seeking work, and meet the wage amount requirements. Workers may be ineligible for benefits if they left employment voluntarily without good cause, were discharged for statutorily defined just cause, failed actively to seek or accept employment, or are seeking to obtain unemployment benefits from another jurisdiction.

#### **POSTING REQUIREMENTS**

Many of the Federal and State laws mentioned above require an employer to post notices in the workplace notifying employees of their rights. Required notices include an employee's rights under Title VII, USERRA, the Polygraph Protection Act, the FLSA, the FMLA, workers compensation, and job safety. The U.S. Department of Labor maintains a list of required federal notices and makes posters available for download and printing or for purchase. The Utah Labor Commission likewise makes state-required posters available online or by mail.



## Chapter VI: Environmental Law

### ENVIRONMENTAL LAW FEDERAL ENVIRONMENTAL LAW

Many environmental legal requirements and liabilities are federally mandated and administered. The State of Utah has been delegated authority to administer many of the federal environmental programs, including but not limited to programs under the Clean Air Act, Clean Water Act, etc. Utah lies within the jurisdiction of the U.S. Environmental Protection Agency's Region VIII office in Denver, Colorado.

### DELEGATED FEDERAL PROGRAMS

Utah has a State Implementation Plan, which includes programs for pre-construction New Source Review permitting, operating permits, and other key programs authorized under the federal Clean Air Act. Utah has also been delegated primary permitting and enforcement authority to administer the federal hazardous waste management program, the federal underground storage tank program, the federal safe drinking water program, and the federal Clean Water Act NPDES discharge permitting and pretreatment programs in Utah.

### UTAH ENVIRONMENTAL QUALITY CODE AND THE DEQ

Utah's Environmental Quality Code contains comprehensive environmental protection programs regulating air quality, water quality, drinking water, solid and hazardous waste management, radiation control, hazardous substance mitigation and emergency response. Utah's environmental programs are administered by the Utah Department of Environmental Quality ("DEQ") and its various Divisions. Each of the environmental divisions of the DEQ is overseen by a board, appointed by the Governor, which promulgates rules and policies and adjudicates compliance and permitting disputes. Each division also has a Director, who acts as the head of that section of the agency. Wildlife, water rights, and other natural resource regulatory programs are separately administered by the Utah Department of Natural Resources.

The DEQ has an Office of Planning and Public Affairs, which works directly with businesses to help them navigate through the state's environmental permitting process. Interested business owners may send a letter to the Office of Planning and Public Affairs, describing their proposed production process. Certain divisions within the department also have special assistance programs for small businesses requiring environmental permits from the state, coordinated by the Small Business Ombudsman.

### UTAH ENVIRONMENTAL STATUTES

The significant Utah environmental statutes administered by the DEQ include:

- Air Conservation Act
- Radiation Control Act
- Safe Drinking Water Act
- Water Quality Act
- Solid and Hazardous Waste Act
- Hazardous Waste Facilities Management Act

- Hazardous Substances Mitigation Act
- Underground Storage Tank Act
- Lead Acid Battery Disposal Act
- Environmental Self Evaluation Act
- Voluntary Cleanup Program
- Environmental Institutional Control Act

#### **NO UTAH “NEPA” OR TRANSACTION-TRIGGERED LAW**

Utah does not have a general environmental review statute in the nature of the federal National Environmental Policy Act (“NEPA”), requiring review of potential, broad environmental impacts prior to governmental action. Utah also does not have a transaction-triggered environmental law requiring notification or certification of cleanup prior to transfer of property, although specific environmental laws may be implicated at the time of a transfer if there are existing environmental permits that need to be transferred, environmental permits that need to be acquired, or if environmental problems are discovered during due diligence that must be addressed. Additionally, as a result of past contamination, specific properties may be subject to recorded restrictions on development without governmental approval or notification.

#### **VOLUNTARY CLEANUP PROGRAM**

Utah has a Voluntary Cleanup Program (“VCP”) that provides a workable regulatory procedure for parties to conduct voluntary cleanups of eligible sites under the direction of the DEQ. Participation in the program is initiated by filing an application with the DEQ. Certain sites are not eligible for cleanup under the VCP, specifically: sites listed on the National Priorities List (“NPL”); treatment, storage and disposal facilities regulated under the Resource Conservation and Recovery Act (“RCRA”); and other sites which are already subject to a pending enforcement of cleanup order. If the DEQ agrees to accept a party’s application for voluntary cleanup approval, the applicant and the DEQ enter into a Voluntary Cleanup Agreement.

Significant benefits of participation in the VCP include the opportunity to receive a certificate of completion confirming the cleanup of the site and a statutory release from liability under state environmental laws. The program also provides a right of contribution allowing parties who have performed a voluntary cleanup under the program and incurred response costs in excess of their share to seek contribution from other responsible persons.

#### **UTAH ENVIRONMENTAL SELF-EVALUATION ACT**

The Utah Environmental Self-Evaluation Act, Utah Code Ann. 19-7-101 et seq., provides incentives for voluntary identification, disclosure and remediation of compliance problems. DEQ will waive civil penalties for instances of noncompliance (although it may still seek recovery of any economic benefit accrued from the violation, and it may not waive civil penalties where there is lack of due diligence, recurrence of the violation, reckless or willful disregard of environmental laws, or fraud, or DEQ has already initiated a compliance investigation at the time of the disclosure, or disclosure is required by law), provided the regulated entity: (1) discovered its noncompliance through an environmental self-evaluation; (2) disclosed its noncompliance to the DEQ in writing within 21 days after discovery; (3) remedied or corrected its noncompliance within 60 days after discovery, or within a reasonable amount of time if the violation cannot be remedied within 60 days; and (4) submitted to the DEQ a written outline of steps it will take to prevent recurrence of its noncompliance.

## **ENVIRONMENTAL INSTITUTIONAL CONTROLS**

Utah has a statutory scheme for documenting and recording activity and use limitations on real property to address environmental impacts and cleanup.

## **AIR QUALITY**

Under the Utah Air Conservation Act, the Utah Division of Air Quality regulates air quality in Utah. The basic statutory mandate is to prevent, abate, and control air pollution in the state. A notice of intent and approval order are required for virtually any new or modified direct or indirect commercial source of pollution and for installation of pollution control equipment, even if the facility, because of the small amount of its emissions, would not be subject to new source review and permitting under federal law (commonly referred to as “minor source” permitting). There are few exemptions from Utah’s source permitting requirements.

Utah has been delegated primacy under the Clean Air Act and has an approved State Implementation Plan (“SIP”).

Utah has a program for regulating hazardous air pollutants, including asbestos. Virtually any renovation or demolition project involving asbestos conducted at a commercial facility or by a third party at a noncommercial facility is subject to these stringent requirements.

Under Utah’s Indoor Clean Air Act, smoking is generally prohibited in all enclosed indoor places of public access, in publicly owned buildings and offices, and in nonpublic workplaces, except in designated smoking areas. Exceptions include guest rooms in lodging facilities, taverns, and private clubs. Proprietors and employers must make appropriate efforts to provide their patrons and employees with a smoke-free environment and are subject to enforcement for noncompliance.

## **WATER QUALITY**

The Utah Water Quality Act, administered by the Utah Division of Water Quality, prohibits the discharge of pollutants into the “waters of the State” without a valid permit and prohibits placement of any wastes in a location where there is probable cause to believe they will cause water pollution. “Waters of the State” include both surface and underground waters.

Utah has been delegated authority to administer the federal NPDES permitting program for permitting point source discharges to surface waters. Utah has not been delegated authority to administer the Clean Water Act Dredge and Fill permitting program—such permits must be obtained from the Army Corps of Engineers.

Utah has a ground water protection program requiring permits for potential or actual discharges to the state’s underground waters. Utah also requires permits for construction of “treatment works,” which are broadly defined to include most impoundment structures, wastewater ponds, and treatment facilities.

Utah requires immediate reporting of spills or discharges of any oil or other substance which may cause pollution of the waters of the state.

## **DRINKING WATER**

The Utah Division of Drinking Water administers federal Safe Drinking Water Act programs in Utah. The Division’s regulations specify the minimum requirements for public drinking water systems, including, among other things, the sizing of drinking water facilities, storage, distribution systems,

capacity and quality of drinking water sources, and source protection. Public drinking water systems are defined as publicly or privately owned systems providing water for human consumption and other domestic uses, which have at least 15 service connections or serve an average of 25 individuals daily at least 60 days out of the year. The Division assumes a ratio of 3.13 individuals per connection unless more accurate information is provided. A public drinking water system requires not only adequate water rights approved for domestic and other uses, but also actual developed water sources of the requisite quality and capacity to serve the proposed number of connections.

### **SOLID AND HAZARDOUS WASTE**

The Utah Division of Solid and Hazardous Waste regulates the management of solid and hazardous waste in Utah. Utah has been delegated authority to administer the federal hazardous waste management program under Subtitle C of the RCRA. No person may own, construct, modify, or operate any facility or site for the purpose of disposing of non-hazardous solid waste, or treating, storing, or disposing of hazardous waste without submitting an operation plan to the Solid and Hazardous Waste Board and obtaining a permit. Approval from the governor and legislature is further required to construct any facility for the treatment or disposal of hazardous waste or non-hazardous solid waste.

### **UNDERGROUND PETROLEUM STORAGE TANKS**

The Utah Division of Environmental Response and Remediation regulates petroleum underground storage tanks (“USTs”) and has been delegated primary authority to administer the federal UST Program in Utah. The Division also certifies tank installers, inspectors, testers, and removers, and administers the Utah underground petroleum storage tank fund.

### **HAZARDOUS SUBSTANCE MITIGATION**

The DEQ and its Division of Environmental Response and Remediation administers the Utah Hazardous Substances Mitigation Act, which is comparable to, but much less comprehensive than, the federal Superfund Law. The DEQ and the Division also work cooperatively with the U.S. Environmental Protection Agency (“EPA”) on response actions under the federal Superfund Law in Utah. The Hazardous Substances Mitigation Act authorizes the Director of the DEQ to use the Utah Hazardous Substance Mitigation Fund to conduct remedial investigations and feasibility studies at certain contaminated sites within the state which cannot be addressed under other state regulatory programs. It also provides authority to respond to emergency releases of hazardous materials which present a direct and immediate threat to public health or the environment by requiring certain responsible parties to undertake appropriate abatement action or to undertake the action directly using monies from the fund. “Hazardous materials” is broadly defined to include hazardous substances subject to the federal Superfund Law, plus PCBs, asbestos, dioxin, and petroleum. Responsible parties include the same cast of owners, operators, and arrangers that may be liable under the Superfund Law. Liability is strict, but not several and must be apportioned among responsible parties according to their respective contributions to the release of hazardous materials.

### **RADIATION CONTROL**

The Utah Division of Radiation Control protects human health and the environment from sources of radiation that constitute a significant health hazard, and requires that licenses be obtained for sources of ionizing radiation.



## CHAPTER VII: INTELLECTUAL PROPERTY

### INTELLECTUAL PROPERTY LAW FEDERAL LAW

#### COPYRIGHT LAW

This area is governed exclusively by federal law, Title 17, U.S.C.

**In General.** Copyright law provides the author of a copyrightable work (or such person's employer in the case of a "work made for hire") with certain specific exclusive rights to use, distribute, modify, perform and display the work. Generally, works are entitled to copyright protection for the life of the author plus 70 years. As to works made for hire, copyright protection is for the shorter of 95 years after publication or 120 years after creation. However, the copyright protection period varies depending on the date of creation of the work. Anyone who, without authority, exercises the rights reserved exclusively to the copyright owner is considered to infringe the copyright and may be liable for actual or statutory damages and may be subject to injunctive relief.

**Copyrightable Works.** Works of authorship that qualify for copyright protection include literary works, musical works (including lyrics), dramatic works, choreographic works, audio visual works, pictorial, graphic and sculptural works, sound recordings, and architectural works. The Computer Software Copyright Act of 1980 expressly made computer software eligible for copyright protection, a point previously in doubt. Constantly developing technology is likely to present many new, presently unforeseen issues. All works eligible for copyright protection must meet two specific requirements. First, the work must be fixed in some tangible form: there must be a physical embodiment of the work so that the work can be reproduced or otherwise communicated. Second, the work must be the result of original and independent authorship. (The concept of originality does not require that the work entail novelty or ingenuity—concepts of importance to patentability.)

**Advantages of Copyright Registration.** Copyright protection automatically attaches to a work the moment the work is created and fixed in a tangible medium. However, "registration" of the work with the United States Copyright Office provides advantages. A certificate of registration is prima facie evidence of the validity of the copyright, provided registration occurs not later than five years after first publication. With respect to works whose country of origin is the United States, registration is a prerequisite to an action for infringement. With respect to all works, regardless of the country of origin, certain damages and attorneys' fees relating to the period prior to registration cannot be recovered in an infringement action. Registration also is a useful means of providing actual notice of copyright to those who search the copyright records.

**Copyright Registration Application Process.** In order to obtain registration of a copyright, an application for registration must be filed with the United States Copyright Office. The application must be made on the specific form prescribed by the Register of Copyrights and must include the name and address of the copyright claimant, the name and nationality of the author, the title of the work, the year in which creation of the work was completed, and the date and location of the first publication. In the case of a work made for hire, a statement to that effect must be included. If the copyright claimant is not the author, a brief statement regarding how the claimant obtained ownership of the copyright must be included. An application must be accompanied by the requisite fee, and a copy of the work must be submitted.

**Copyright Notice.** Until 1989, all publicly distributed copies of works protected by copyright and published by the authority of the copyright owner were required to bear a notice of copyright. A copyright notice is no longer mandatory, but a copyright notice is still advantageous. For example, the defense of “innocent infringement” is generally unavailable to an alleged infringer if a copyright notice is used.

If a copyright notice is used, the notice should be located in such a manner and location to sufficiently demonstrate the copyright claim. The notice should consist of three elements: first, the symbol of an encircled “C” (©), or the word “copyright,” or the abbreviation “copr.”; second, the year of first publication; and third, the name of the copyright owner.

**Works Made for Hire.** In a “work made for hire,” the employer is presumed to be the author. Authorship is significant because a copyright initially vests in the author. The parties can rebut the presumption of employer authorship by an express written agreement to the contrary. The term “work made for hire” applies to any work created by an employee in the course and scope of employment. On occasion there is dispute as to whether a work created by an employee arose from the employment. Employers often require execution of a formal employment agreement under which the employee expressly agrees that all copyright rights will belong to the employer. A similar agreement is also advisable in connection with the engagement of an independent contractor to perform copyrightable services for a business, but the employer should be aware that only certain types of works can be considered a work made for hire when created by an independent contractor. If the particular matter cannot be a work made for hire, the employer should negotiate an agreement for the assignment of the copyright by the independent contractor.

**Copyright Protection for Foreign Authors.** Copyright protection is available under United States law for foreign authors until the copyrightable work is published. If the work has been published, the availability of continued United States copyright protection is dependent upon the location of the publication and the nationality or domicile of the author. Copyright protection continues in the United States subsequent to publication if publication by the foreign author occurs in the United States, occurs in a country that is a party to the Universal Copyright Convention or to the Berne Convention, or occurs in a country named in a presidential copyright proclamation. If the work is first published by a foreign author outside the United States, continued copyright protection in the United States is only available if the foreign author is either a domiciliary of the United States or a national or domiciliary of a country that is party to a copyright treaty to which the United States is also a party. A person is generally a domiciliary of the country in which the person resides with the intention to remain permanently.

## **PATENTS**

This area is governed exclusively by federal law. Title 35, U.S.C.

**In General.** One who invents or discovers a new machine, device, or process may be able to obtain a United States patent. A United States patent provides the inventor with the exclusive right for a specified time to make, use, import, offer to sell, or sell in the United States the patented invention. A patent provides the holder with a limited monopoly on the use of the patented invention. A valid patent forecloses use of the patented invention by any other party, even if another party independently conceives the identical invention.

A utility patent, which generally governs the functional aspects of a machine, manufacturing process, or composition of matter, is enforceable beginning at the grant of the patent and ending twenty years (plus up to five more years for certain delays) after the filing date of the regular patent application. A design patent, which covers the design or appearance of an article of manufacture, is



enforceable for fifteen years from the granting date of the patent.<sup>6</sup> A provisional patent, which is filed before a regular patent application, establishes a priority filing date and provides up to twelve months to further develop the invention without filing a regular patent application. Anyone without authority from the patent holder who makes, uses, imports, or sells the patented invention in the United States during the life of the patent is considered to “infringe” the patent and may be liable for damages.

**Effect of Foreign Patents.** A foreign patent is generally not enforceable in the United States. Furthermore, an invention that is the subject of a foreign patent cannot be the subject of a United States patent, unless an application for a United States patent is filed within one year following issuance of the foreign patent.

**Patentability Under Federal Patent Statutes.** To be eligible for a federal utility patent, an invention must fall into one of the classes of patentable subject matter set forth in the United States patent statutes. These classes are machines (e.g., a mechanism with moving parts), articles of manufacture (e.g., a hand tool), compositions of matter (e.g., a plastic), and processes (e.g., a method of refining). An improvement falling within any of these classes may also be patentable. Discoveries falling outside these categories are not patentable, unless some other statutory provision applies.

In addition to being within one of the four classes and being fully disclosed, a utility invention must also be:

- a) “novel,” in that it was not previously known to or used by others in the United States or printed or described in a printed publication anywhere;
- b) “non-obvious” to a person having ordinary skill in the relevant art; and
- c) “useful,” in that it has utility, actually works, and is not frivolous or immoral.

A design patent may be obtained for the ornamental design of an article of manufacture. A design patent offers less protection than a utility patent because the patent protects only the appearance of an article and not its construction or function. A plant patent may be obtained by anyone developing a new variety of asexually reproduced plant, such as a tree or flower. Some plants may also be protectable with a utility patent or under the Plant Variety Protection Act, administered by the United States Department of Agriculture.

In order to determine novelty and, hence, patentability of an invention, it is often useful to search the records of the United States Patent and Trademark Office (“PTO”). At the PTO, one may examine all United States patents, many foreign patents, and a large number of technical publications. A patent search is customarily performed by a patent attorney or by an individual with similar technical training, sometimes referred to as a patent agent. A patent attorney or patent agent may be asked to render an opinion regarding the patentability of a particular invention. An inventor can then make an informed decision as to whether to proceed with the cost of an actual patent application.

**Patent Application Process.** A United States patent application must be filed with the PTO. A complete patent application includes four elements. First, the application must include the “specification.” The specification is a description of what the invention is and what it does. The specification can be filed in a foreign language, provided that an English translation, verified by a certified translator, is filed within a prescribed period. The precise wording used in the specification is important because it establishes the scope of disclosure from which allowed claims ultimately depend and derive. Second, the application must include an oath or declaration. The oath or declaration certifies that the inventor believes himself or herself to be the first and original inventor. If the inventor

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<sup>6</sup> 35 U.S.C.A. § 173 (West).



does not understand English, the oath or declaration must be in a language that the inventor understands. Third, the application must include drawings, if essential to an understanding of the invention. Fourth, the appropriate fee must be included.

After a proper application is filed, the application is assigned to an examiner with knowledge of the particular subject matter. The examiner makes a thorough review of the application and the status of existing concepts in the relevant area to determine whether the invention meets the requirements of patentability. The patent review process takes from 18 months to three years. Rejection of a patent application by the examiner may be appealed to the Board of Patent Appeals. Decisions of the Board of Patent Appeals may be appealed to the federal courts. Provisional patent application requirements are less stringent than a regular patent application, but care must nevertheless be exercised in drafting the specification to ensure compliance with the statutory disclosure requirements. The oath or declaration of the inventor and claims are not required, and the application is held for the 12-month period without examination.

**Markings.** After a patent application has been filed, the product made in accordance with the invention may be marked with the legend “patent pending” or “patent applied for.” After a patent is issued, products may be marked “patented” or “pat.,” together with the United States patent number. Marking is not required, but it may be necessary to prove marking in order to recover damages in an infringement action.

**Rights to Patented Inventions.** Disputes sometimes arise between employers and employees over the rights to inventions made by employees during the course of employment. Because of this, employers often require employees to execute formal agreements under which each signing employee agrees that all rights to any invention made by the employee during the term of employment will belong to the employer.

**TRADEMARKS** –This area is governed by both state and federal law.<sup>7</sup>

**In General.** A trademark is often used by a manufacturer to identify its goods and to distinguish those goods from items manufactured by others. A trademark can be a word, name, number, slogan, symbol, device, sound, scent, or combination thereof. A trademark should not be confused with a trade name. Although the same designation may function as both a trademark and a trade name, a trade name refers to a business title or the name of a business; a trademark is used to identify the goods manufactured or sold by the business. A business that provides services rather than goods may also use a service mark to distinguish its services. Generally, service marks and trademarks receive the same legal treatment.

**Selection of Trademark.** A company should carefully consider the trademark selected for its merchandise. The level of protection against infringement of a trademark varies with the “strength” or “uniqueness” of the trademark. “Descriptive” marks are the weakest and least defensible. A descriptive trademark is a name that describes some characteristic, function, or quality of the goods. A “fanciful” mark, the strongest type of mark, is a coined name that has no dictionary definition.

Evaluation should also include consideration of the likelihood of success in obtaining federal and state registrations of the trademark. For example, a trademark that is “merely descriptive” cannot be registered under federal or state law unless it has acquired distinctiveness through continuous use over a period of time.

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<sup>7</sup> See 15 U.S.C.A. §§ 1051-1141 (West).

Selection of a trademark should be accompanied by a trademark search to determine whether another manufacturer has already adopted or used a mark that is the same or similar to the one desired. Publications provide lists of existing trademarks, registered and unregistered, and there are businesses that specialize in trademark searches. Actual and potential trademark conflicts should be avoided, lest the manufacturer become involved in an expensive infringement lawsuit. Of even greater concern is the potential loss of the right to use a mark after considerable expenditure in advertising merchandise bearing the mark.

**Advantages of Trademark Registration.** Under the trademark laws of the United States and Utah, the principal method of establishing rights in a trademark is actual use of the trademark. “Registration” of a trademark is not legally required but can provide certain advantages.

Federal registration of a trademark is presumptive evidence of the ownership of the trademark and of the registrant’s exclusive right to use of the mark in interstate commerce, strengthening the registrant’s ability to prevail in any infringement action. Federal registration is also a prerequisite for bringing a lawsuit under the federal trademark laws.

After five years of continued use of the mark following federal registration the registrant’s exclusive right to use of the trademark becomes virtually conclusive through the filing of affidavits verifying such use. Federal registration may assist in preventing the importation into the United States of foreign goods that bear an infringing trademark. There are also other less tangible advantages of registration, such as the good will arising out of the implication of government approval of the trademark.

State registration provides some advantages, not as extensive as federal registration. State registration is usually advisable, particularly in situations in which a company’s sales will occur only in Utah.

**Federal Registration Application Process.** 15 U.S.C. § 1051, et seq. Federal trademark registration requires that a trademark application be filed with the PTO. The application must identify the mark and the goods with which the mark is used or is proposed to be used, the date of first use, and the manner in which it is used. The application must be accompanied by payment of the requisite fee, a drawing page depicting the mark, and specimens of the mark as it is actually used. After the application is filed, it is reviewed by an examiner who evaluates, among other matters, the substantive ability of the mark to serve as a valid mark and the possibility of confusion with existing marks. If the examiner rejects the application, the examiner’s decision can be appealed to the Trademark Trial and Appeal Board. An adverse decision by that body can be appealed to federal court.

If the application is approved, the mark is published in an official gazette of the PTO. Opponents of the registration have thirty days after publication, or such additional time as may be granted, to challenge the registration. If no opposition is raised, or if the opponent’s claims are rejected, an applicant whose mark is already in use receives a “certificate of registration.”

An applicant whose trademark is proposed for registration before actual use receives, upon approval of the application, a “notice of allowance.” An applicant who receives a notice of allowance must within six months of the receipt of the notice furnish evidence of the actual use of the trademark. The applicant then is entitled to a certificate of registration. Failure to furnish evidence of the actual use of the mark within the time allowed results in rejection of the application.

**Post-Certificate Federal Procedures.** A certificate of trademark registration issued by the PTO remains in effect for ten years. However, the registration will be cancelled at the end of six years unless the registrant furnishes evidence of continued use of the trademark. The initial ten-year term of a certificate of registration can be renewed within the term's last six months for an additional ten-year term by furnishing evidence of continued use of the mark and paying a fee.

After at least five years of continuous use of a trademark following the receipt of a certificate of registration, a registrant can seek to have the status of the trademark elevated from "presumptive" evidence of the registrant's exclusive right to use of the trademark to virtually conclusive evidence of an exclusive right. To do so, the registrant must furnish the PTO with evidence of continuous use of the trademark for at least five years. Additionally, there must not be any outstanding lawsuit or claim that challenges the registrant's rights to use the mark.

## STATE CONSIDERATIONS

### TRADEMARKS

Under Utah law, a trademark can be any word, name, mark, brand, symbol, emblem, stamp, imprint, or device used to identify goods made or sold by one person to distinguish them from goods made or sold by others. A service mark is a mark used in selling or advertising services to identify services of one person and distinguish them from services of others. However, the terms trademark and service mark are often used interchangeably.

A mark which distinguishes one's goods or services from another's may generally be registered under Utah law. However, certain marks cannot be registered, even if distinctive, such as marks that include immoral, deceptive, or scandalous matter, marks that are primarily geographically descriptive or primarily a surname, and marks that include the name or portrait of a particular living individual, without that individual's written consent. A mark that resembles another mark previously used in the state, and is likely to cause confusion with that mark, also may not be registered.

An application to register a trademark is filed with the Division of Corporations and Commercial Code on forms provided by the Division. The application requires the applicant's name and address, type of business organization and state of organization, a description of the goods or services with which the mark is used, and the date when the mark was first used in the state and elsewhere. The application must be accompanied by two samples of the mark, along with the appropriate filing fee.

Registration of a mark entitles its owner to exclusive use of the mark within the state, subject to any prior rights of pre-existing users. A registration is valid for five years from the date of registration. A registration may be extended for additional five-year periods by filing a renewal application at least six months prior to expiration, provided that the mark is still in use.

Utah law prohibits use of a reproduction, counterfeit, copy, or colorable imitations of a registered mark, without permission from the registered owner. Potential remedies include injunctive relief and compensatory damages suffered or profits derived from the wrongful use. As under federal law, dilution of famous marks is also prohibited.

### TRADE SECRETS

Utah has adopted the Uniform Trade Secrets Act. The Act prohibits actual or threatened misappropriation of trade secrets. Misappropriation includes acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means, or disclosure or use of a trade secret of another without express or implied consent. A trade secret is



information, including a formula, pattern, compilation, program, de vice, method, technique, or process, that derives independent economic value from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use and which is the subject of reasonable efforts to maintain its secrecy. Injunctive relief is available to prevent actual or threatened misappropriation.

#### **EMPLOYMENT INVENTIONS**

The Utah Employment Inventions Act provides that an employer may require an employee to sign an employment agreement, assigning or licensing to his employer any or all of his rights and intellectual property in an employment invention. An employment invention is one that is conceived, developed, reduced to practice, or created by an employee within the scope of his employment, on his employer's time, or with the aid, assistance, or use of any of his employer's property, equipment, facilities, supplies, resources, or intellectual property, or is the result of any work performed by an employee for his employer, or is related to the industry or trade of the employer or the current or anticipated business of the employer.

Employment or continuation of employment is adequate consideration to support enforcement of an employment agreement. However, an employer may not require an employee to enter into an employment agreement to assign or license any rights to an invention that is created by the employee entirely on his own time and is not an employment invention, unless employment is not conditioned on such an agreement.

## **CHAPTER VIII: DISPUTE RESOLUTION**

### **DISPUTE RESOLUTION FEDERAL COURT SYSTEM**

The trial courts of the federal court system are the United States District Courts. Each district has federal district court judges who are appointed by the President for life terms upon approval by the United States Senate. Appeals from the United States District Court for the District of Utah are to the Tenth Circuit Court of Appeals.

The federal district courts are courts of limited jurisdiction. The types of cases they may hear are mandated by both the United States Constitution and federal statute. They have exclusive jurisdiction over bankruptcy, patent and copyright, antitrust, postal matters, internal revenue, admiralty, and federal crimes, federal torts, and customs. All other jurisdiction is concurrent with that of the state courts. There are generally two ways to gain access to the federal district courts when there is such concurrent jurisdiction. First is diversity jurisdiction, which involves disputes between citizens of different states with an amount in controversy exceeding \$75,000. To be brought in federal court, there must be complete diversity, i.e., none of the plaintiffs may be a citizen of the same state as any of the defendants. The second way a case may be brought before the federal district court is when the case involves a federal question, i.e., presenting an issue arising under the Constitution, statutes, or treaties of the United States. If a party's case does not fit within one of the statutorily mandated jurisdictions, there is no recourse to the federal courts.

The workings of the federal district courts are governed by the Federal Rules of Civil Procedure, promulgated by the United States Supreme Court and approved by the United States Congress. These are a uniform body of procedural rules applicable to every federal district court in the United States. Each federal district court also establishes its own rules applicable only to the procedure in that district court.

These rules often set forth very specific guidelines for the handling of an action, and close attention must be paid to them. Thus, one participating in a suit in federal district court must be aware of that court's local rules as well as the Federal Rules of Civil Procedure.

### **STATE COURT SYSTEM**

The Utah judicial system consists of the Utah Supreme Court, Utah Court of Appeals, district courts, juvenile courts, municipal and county justice courts, and small claims courts.

#### **SUPREME COURT**

The Utah Supreme Court is the highest court in the state. It is composed of five justices, one of whom is elected Chief Justice by the majority of the other members of the court. Each justice is appointed for a life term subject to retention election every ten years, and the office of Chief Justice is held for four years. The court sits in Salt Lake City.

The Supreme Court has original jurisdiction to answer questions of state law certified by federal courts and to issue extraordinary writs and all writs necessary to carry into effect its orders, judgments, and decrees, or in aid of its jurisdiction.



The Supreme Court has appellate jurisdiction over interlocutory appeals, final orders or judgments of the Court of Appeals, cases certified by the Court of Appeals, discipline of lawyers, final orders of certain administrative agencies in formal adjudicatory proceedings, final orders of district courts in review of informal adjudicative proceedings by certain agencies, final judgment of any court holding a federal or state statute facially unconstitutional, appeals from a district court involving conviction of a first degree or capital felony, orders of any court over which the Court of Appeals does not have original appellate jurisdiction, and appeals from a district court ruling on legislative subpoenas. The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for review of Court of Appeals adjudication, but must review cases certified to it by the Court of Appeals prior to final judgment.

The Supreme Court may transfer to the Court of Appeals most matters over which it has original appellate jurisdiction.

#### **COURT OF APPEALS**

The Utah Court of Appeals is the intermediate appellate court in the state and sits in Salt Lake City. It is composed of seven judges appointed for life terms subject to retention election every six years. One judge is elected by the others to serve as presiding judge for a two-year term. The Court of Appeals sits in panels of three judges.

The Court of Appeals has jurisdiction to issue extraordinary writs and all writs necessary to carry into effect its orders, judgments, and decrees, or in aid of its jurisdiction. The court has appellate jurisdiction over matters such as final orders and decrees from formal adjudicative proceedings and district court review of informal adjudicative proceedings of most agencies, appeals from juvenile courts, interlocutory appeals from any court in most criminal cases, appeals from district courts involving domestic relations cases, and cases transferred from the Supreme Court.

#### **DISTRICT COURTS**

Trial courts of general jurisdiction in Utah are referred to as district courts. Utah is divided into eight judicial districts, with the number of judges in each district ranging from two to twenty-eight. Judges are appointed for life terms subject to retention election. District courts are located in the county seat of their respective counties. District courts have original jurisdiction over all matters civil and criminal, including review of agency adjudicative proceedings, except as otherwise provided by law.

#### **JUVENILE COURTS**

Utah is divided into eight juvenile court districts. Juvenile courts have exclusive, original jurisdiction over minors who have violated any federal, state, or municipal law. Juvenile courts also have exclusive jurisdiction over abused or neglected minors.

#### **MUNICIPAL AND COUNTY JUSTICE COURTS**

Counties or municipalities may create justice courts. A justice court has jurisdiction over certain misdemeanors, offenses relating to local ordinances, and certain motor vehicle violations committed within the territorial jurisdiction.

## **SMALL CLAIMS COURTS**

Small claims courts are departments of district and justice courts. Their jurisdiction extends to cases involving recovery of money where the amount claimed does not exceed the jurisdictional amount, as provided in Utah Code Ann. § 78A-8-102 (currently the jurisdictional amount is \$11,000), including attorney fees but exclusive of court costs and interest. The defendant must reside within the jurisdiction of the court or the action for indebtedness must have been incurred there.

## **MEDIATION AND ARBITRATION**

Mediation is a method for voluntarily resolving disputes with a mediator as the facilitator. It is nonbinding, and each party is generally represented by counsel and a mediation brief is filed with the mediator. This method of solving matters is usually very informal and involves a meeting of both sides with the mediator, in which each side presents their positions and an overview of the evidence which they believe they have to support their claims. The mediator will then most effectively separate the parties in different conference rooms and engage in “shuttle diplomacy” to determine whether a resolution can be achieved. This mode of dispute resolution is very effective if both parties are seeking some timely resolutions of their disputes and if both have a will to resolve the matter short of a prolonged court encounter.

Arbitration can be either binding or nonbinding. If it is nonbinding, the final suggested ruling by the arbitrator would not be binding on either party and the parties could proceed to litigate or take other actions to resolve matters. The most usual form of arbitration, however, is binding arbitration. In binding arbitration proceedings, the parties enter into an arbitration agreement in which the subject matter of the arbitration is outlined and the parties agree that an arbitrator or a panel of arbitrators will hear the evidence and claims of the parties and resolve the matter in much the same manner that a judge would do in a court of law. Arbitration can be a quicker and less expensive form for dispute resolution than litigating in court. Some of the usual discovery mechanisms utilized in litigation can be used in arbitration, but they are most often kept to a minimum for the sake of reducing costs. At the final arbitration hearing, the parties present their positions much as they would in opening statements before a court, and proceed to put on their evidence to persuade the arbitrator or the panel of arbitrators of their position. The usual court rules of pleadings and evidence are modified and can be much more informal in an arbitration if the parties and the arbitrator so agree. Generally, the arbitrator requires that briefs be filed by the parties prior to the start of arbitration so the arbitrator can review the positions of the parties and the evidence which they propose to present. At the conclusion of the presentations, the arbitrator reviews the evidence and makes a ruling. The ruling will be in writing and can be a short summary ruling, a more reasoned ruling, or a more lengthy statement of findings of fact and conclusions of law and a judgment much as could be expected from a court.

Utah has passed the Uniform Mediation Act (78(b)-10-101, et seq.) and the Utah Uniform Arbitration Act (78(b)-11-1-1, et seq.) which provide for the usual rules and procedures to be followed in the mediation and arbitration proceedings.



## Chapter IX Financing Investments

### FINANCING INVESTMENTS DEBT FINANCING

Debt financing relies on borrowed capital that must be repaid. Perhaps the most widely used and available sources of debt financing are commercial lending institutions. However, debt financing may also be obtained from private or public sources. There are numerous state and federal commercial banks, credit unions, industrial banks, and savings banks authorized to do business in Utah. The Utah Department of Financial Institutions maintains a list of the names and addresses of all commercial lending institutions authorized to do business in the state (<https://dfi.utah.gov/>).

In addition to commercial lending institutions, debt financing may also be available through other avenues such as the United States Small Business Administration, which offers federally guaranteed loans to qualifying small businesses, the Utah Technology Finance Corporation, which is an independent corporation of the state, the Utah Community Reinvestment Corporation, and revolving loan funds offered by some cities, counties, and Associations of Governments.

### EQUITY FINANCING

Equity financing can also be obtained through private sources such as venture capital funds, “angel” investors, and companies seeking equity investments. Utah has an active venture capital community, and equity investors may be listed by groups such as the Mountain West Capital Network ([www.mwcn.org](http://www.mwcn.org)). Venture capital is available through investment banks and privately financed venture funds. Because venture capital is equity financing repaid by capital gains through the sale of equity, venture capitalists generally invest only in businesses with the potential of rapid growth and a public offering of stock in three to five years.

### HYBRID INSTRUMENTS

Hybrid instruments such as preferred stock or subordinated debt are used by investors in Utah who are willing to assume more risk than that typically associated with straight debt financing, but who are not interested in equity investments associated with common stock or LLC common membership interests.

### STATE SECURITIES ISSUES

#### REGISTRATION OF SECURITIES

Utah has substantially adopted the Uniform Securities Act. It is unlawful for any person to offer or sell securities unless the securities are registered, are exempt from registration, or are “federally covered securities” for which a notice filing has been made. A security includes, among other things, a note, stock, bond, debenture, evidence of indebtedness, transferable share, investment contract, and certificate of deposit for a security. An offer to sell includes an<sup>8</sup> attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

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<sup>8</sup> UTAH CODE ANN., § 61-1-13 (West 2016)

Utah law allows registration of securities by notification, coordination, or qualification, depending on the type of security. A registration statement is effective for one year. So long as the registration statement is effective and the offering is ongoing, the filing of quarterly reports may be required.

#### **REGISTRATION EXEMPTIONS**

There are a number of exemptions from the general rule requiring registration of securities. For instance, registration is not required for securities issued or guaranteed by the federal, state, or local governments, or by banks, savings and loans, credit unions, or public utilities. Also exempt are securities listed on the approved stock exchanges, such as the New York Stock Exchange.

Certain securities transactions are likewise exempt from registration requirements, including isolated transactions, transactions by executors, receivers and trustees in bankruptcy, the distribution of securities as a dividend by the issuer, transactions not involving a public offering, and the offer or sale of condominium units. Perhaps most importantly, unregistered securities may be offered for sale under certain conditions if there are no more than fifteen purchasers in the state during any twelve consecutive months.

#### **BROKER-DEALERS AND INVESTMENT ADVISERS**

It is unlawful for any person to transact business as a broker-dealer or agent unless licensed by the Division of Securities. Investment advisers must also be licensed by the Division unless their only clients in the state are investment companies, other investment advisers, banks, and the like, or they have no place of business in the state and had no more than five clients during the preceding twelve month period. A license typically becomes effective thirty days after the application is filed.

#### **ANTIFRAUD RESTRICTIONS**

It is unlawful for any person, in connection with the offer, sale, or purchase of any security to directly or indirectly (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

## CHAPTER X: REAL ESTATE

### REAL ESTATE PUBLIC AND TRIBAL LANDS IN UTAH

Utah is a public land state with well more than half of its land area owned by the federal government, over ten percent is owned by the state, and nearly five percent is held in trust for Native Americans, leaving less than a quarter of all land in Utah in private ownership. Utah is home to five national parks, seven national monuments, two national recreation areas, a national historic site, and six national forests. Utah has four Native American reservations (the Uintah and Ouray (Ute), the Navajo, the Goshute, and the Piute) which encompass not only tribal trust lands but also vast areas of federal, state, and private lands within their boundaries.

Development in Utah can be complicated by the disparate ownership and competing jurisdiction of federal, state, local, and tribal governments and agencies. Even transactions and development limited to privately owned lands may involve access or utility corridors crossing federal or state public lands or tribal lands.

Federal lands are administered by a variety of federal agencies. Well over half of all federal lands in Utah are administered by the Bureau of Land Management. The next largest holdings are administered by the United States Forest Service. The National Park Service, the Fish and Wildlife Service, and the Department of Defense also administer significant federal land holdings in Utah.

The Federal Bureau of Indian Affairs administers tribal trust lands in coordinating with the individual tribes.

After receiving statehood, Utah was granted significant land holdings, typically four sections in every township. The use and disposition of most of these “school lands” are administered by the School and Institutional Trust Lands Administration for the benefit of Utah’s public schools. In addition, the state owns and manages extensive holdings outside the school trust, most notably, lands within the bed of the Great Salt Lake and the beds of other navigable waters within the state’s boundaries.

### PRIVATE OWNERSHIP

#### GENERALLY

Title to real property may be held by one or more individuals or entities, including corporations, partnerships, trusts, and estates. Utah has no laws restricting foreign ownership of property.

#### CORPORATIONS

Unless its articles of incorporation provide otherwise, a corporation may acquire and own real property in the state. Mere ownership of real property in the state by a foreign corporation does not constitute transacting business in the state.

#### LIMITED LIABILITY COMPANIES

Any domestic or foreign limited liability company may purchase and own real property in the state. Mere ownership of real property in the state does not constitute transacting business in the state by a foreign limited liability company.



## **PARTNERSHIPS**

Domestic and foreign partnerships, whether general, limited, or limited liability, may acquire real property in Utah in the name of the partnership.

## **CONCURRENT OWNERSHIP**

### **JOINT TENANCY**

A joint tenancy creates an undivided interest in property with rights of survivorship. Upon the death of one of the joint tenants, the property interest of the deceased tenant automatically transfers to the surviving tenant without probate, regardless of any contrary provision in the deceased tenant's will.

In a conveyance, use of the words "joint tenancy" or "with rights of survivorship" or "and to the survivor of them" creates a joint tenancy. Every ownership interest in real estate granted to a husband and wife is presumed to be a joint tenancy, unless severed, converted, or expressly declared in the conveyance to be otherwise. A joint tenancy is severed and converted into a tenancy in common by a joint tenant making a bona fide conveyance of the joint tenant's interest in the property to oneself or to another.

### **TENANCY IN COMMON**

A tenancy in common creates a separate and distinct interest in property that is freely transferable by any of the co-tenants. Upon the death of a tenant in common, the interest of the deceased tenant passes by will or by intestate succession and does not go to the co-tenant.

In a conveyance, use of the words "tenancy in common" or "with no rights or survivorship" or "undivided interest" creates a tenancy in common. Conveyance of an ownership interest in real estate to more than one party, which does not qualify for the marital joint tenancy presumption, is presumed to be a tenancy in common unless expressly declared in the grant to be otherwise.

### **SPOUSAL RIGHTS**

Upon death of a spouse, the surviving spouse is entitled to sole ownership of any property held in joint tenancy between the spouses. Other property held in the name of the deceased spouse passes according to beneficiary designations, if any, or passes to devisees or heirs by will or intestate succession, subject to a surviving spouse's elective share, and subject to statutory allowances such as the homestead allowance, family allowance, and exempt property allowance. The surviving spouse is generally entitled to the entire intestate estate if the deceased spouse had no surviving descendants or if all of the descendants of the deceased spouse are also descendants of the surviving spouse.

Utah is not a community property state. Upon termination of a marriage, Utah law provides for equitable distribution of property between spouses.

### **COMMON INTEREST COMMUNITIES**

Condominium and planned unit developments are common in Utah. The cooperative form is seldom used.



## **PURCHASE OR SALE OF PROPERTY**

### **PURCHASE AGREEMENTS**

A standard real estate purchase contract approved by the Utah Division of Real Estate is commonly used with most residential real estate transactions. Real estate brokers are required to use this form unless an alternative contract is requested by the buyer or seller and prepared by an attorney. For commercial real estate transactions, custom purchase agreements are often drafted by attorneys.

### **FRAUD PROTECTION**

Utah has various consumer protection laws in place to protect buyers against fraudulent business practices. Additionally, Utah law also requires residential mortgage providers to be licensed by the state and to post a surety bond. Federal law further regulates mortgage service providers.

Utah law also offers special protection to buyers of real property by, for example, requiring in some instances that a developer of subdivided land register with the state before offering lots for sale, provide an offering statement to a potential purchaser, and allow a limited right of rescission.

### **TRANSFER TAXES**

The State of Utah does not impose any special transfer or document tax on the conveyance of real property. However, there are nominal recording fees.

## **CLOSING**

### **DEED**

A conveyance of real property may be in the form of a general or special warranty deed or quitclaim deed executed by the party conveying the property. In a general warranty deed, the seller warrants title subject only to exceptions listed in the deed. In a special warranty deed, the seller warrants ownership of the property only as against claims arising by or through the seller. In a quitclaim deed, the seller makes no warranties as to ownership or condition of title. Sample language for warranty deeds and quitclaim deeds is provided by statute.

A deed generally must be acknowledged, typically by a notary, before it can be recorded. Recording a deed in the county where the subject property is located imparts constructive notice to all third persons. A deed or other instrument must contain a sufficient legal description to be recorded and should give the real estate tax parcel number(s) of the property conveyed.

### **MORTGAGE OR TRUST DEED**

A trust deed is the preferred way to convey real property as security for a loan; however, mortgages are also recognized. Trust deeds and mortgages must be executed with the same formalities as deeds and recorded in the county where the subject property is located to impart notice to third parties.

A trustee under a trust deed must be either (1) an active member of the Utah State Bar with a place of business in Utah or any entity in good standing that is organized to provide licensed professional legal services and employs an active member of the Utah State Bar, (2) a qualifying depository institution or insurance company authorized to do business in Utah and actually doing business in Utah, (3) a corporation authorized to conduct a trust business and actually conducting a trust business in Utah, (4) a licensed title insurance company or agency authorized to do business and actually



doing business in Utah, (5) an agency of the federal government, or (6) an association or corporation licensed, chartered, or regulated by the Farm Credit Administration.<sup>9</sup>

#### **FINANCING**

Financing for real estate transactions is often obtained through commercial lending institutions. Federal or state subsidies might also be available under limited circumstances.

#### **TITLE INSURANCE**

Title insurance is usually procured as a part of any sale of real estate and is typically required by commercial lenders.

#### **CLOSING**

The closing on a real estate transaction is typically conducted by a title company, which often acts as an escrow agent. Title to the property is transferred at that time, upon payment of the purchase price.

#### **FORECLOSURES**

A trust deed may be foreclosed in the event of default by non-judicial means through the power of sale given by the trust deed. The trustee may initiate foreclosure of the subject property by filing a notice of default with the recorder of the county where the trust property is located. No less than three months after filing a notice of default, the trustee must file a notice of sale with the county recorder. The notice of sale must be published in a local newspaper at least three times, once a week, for three consecutive weeks, with the last publication being at least ten days but no more than thirty days prior to the date scheduled for sale of the property. The notice of sale must also be posted in a conspicuous place on the property and at the county recorder's office at least twenty days prior to the date scheduled for the sale. Other notices may need to be given as applicable.

In the case of a non-judicial sale under a trust deed, a deficiency judgment is available only on the difference between the indebtedness (including interest, cost of sale, and trustee's and attorney's fees) and the fair market value of the property sold as of the date of sale. The lawsuit for a deficiency must be brought within three months after the non-judicial sale.

A mortgage must be foreclosed through judicial proceedings whereby the court may award an amount equal to the outstanding amount of the obligation plus costs, disbursements, and attorney's fees. The court may also order sale of the property to satisfy the judgment and direct the sheriff to proceed with the sale. A trust deed may also be judicially foreclosed as a mortgage.

Utah has a "one-action" or "security-first" rule that prohibits bringing an action on a debt, rather than foreclosing, if the debt is secured by a mortgage or trust deed.

#### **LAND SALES CONTRACTS**

Utah law recognizes the use of land sales contracts, whereby title to property is not conveyed by the seller to the buyer until a final installment payment is made by the buyer. However, land contracts are not often utilized.

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<sup>9</sup> Utah Code Ann. § 57-1-21.



## **EASEMENTS**

An easement is an interest in land that runs with the land benefited or burdened by the easement. Utah law expressly recognizes different types of easements, including rights of way, conservation easements, and solar easements. The scope of an easement is determined by the instrument creating the easement or by the intent of the parties. The owner of an easement is entitled to reasonable and prudent exercise of the easement.

## **LEASES**

A residential or commercial lease for real property must be in writing and signed by the party to be charged where the lease term is longer than one year. To impart record notice to third persons, leases, or memoranda thereof, must be acknowledged and recorded like deeds. The provisions of a lease may be agreed upon by the parties in accordance with the general law of contracts.

## **ZONING**

Zoning power is generally exercised at the county or local level in Utah. Zoning requirements can, and do, therefore, vary significantly from jurisdiction to jurisdiction.

## **EMINENT DOMAIN**

The right of eminent domain or condemnation may generally be exercised by political subdivisions of the state, railroads, utilities and mining companies for most public uses, including public buildings, reservoirs, ditches, roads, utility works, and public works.

## **WATER RIGHTS**

### **STATE OWNERSHIP**

All waters in the State of Utah are declared to be public and owned by the state, regardless of the ownership of the land. The legal right to use water must be obtained through a permit system from the State Engineer who oversees the Utah Division of Water Rights. Water may be purchased from water providers who own the underlying permitted water rights. Utah has numerous privately owned water companies, which own water rights. These companies include mutual irrigation companies in which the shareholders own shares representing their right to use a portion of the company's water.

### **BENEFICIAL USE**

A water right is the right to the use of water based upon date of priority, source, point of diversion, nature and quantity of use, and the actual beneficial use of the water. Beneficial use is the basis, measure, and limit of all rights to the use of water in Utah. Legally recognized beneficial uses are irrigation, domestic use, industrial use, use for power generation, and uses for mining, manufacturing, or municipal purposes. In addition, use for maintenance of in-stream flow is recognized as a valid beneficial use of water rights held by the Utah Division of Wildlife Resources and the Division of Parks and Recreation.

### **APPURTENANCE**

Water rights are appurtenant to the land on which the water is used beneficially, which may be different from the land on which the water is drawn or diverted. As a general rule, a conveyance of land by a full warranty deed will convey any appurtenant water rights unless the water rights are expressly reserved or excepted. Water rights are real property as distinguished from water shares in a mutual





irrigation company, which are personal property and are not appurtenant to the land on which the corresponding water is used.

#### **DOCTRINE OF PRIOR APPROPRIATION**

Utah water rights are administered under the doctrine of prior appropriation on the basis that “first in time is first in right.” Water rights with the earliest priority date on a specific water source receive their allotment of water before rights with later priority dates on that same source. Priority is particularly critical in times of low flow, when the capacity of a water source may not be sufficient to serve all the water rights on that source.

#### **INITIATION AND ESTABLISHMENT OF WATER RIGHTS**

Water rights in Utah are administered by the Division of Water Rights and the State Engineer. In the early history of the State of Utah, water rights were simply established and recognized based on the actual appropriation and use of the water for beneficial uses. Since 1903, in the case of ground waters, and since 1935 in the case of surface waters, appropriation of water and initiation of water rights have been governed by an application and approval process administered by the Utah State Engineer.

#### **APPLICATION TO APPROPRIATE**

The application to appropriate must specify the water source, the point and manner of diversion, the proposed beneficial use, and the land on which the water is to be used. Filing of an application to appropriate establishes the priority date. Approval of an application grants the applicant the right to attempt to develop the water right at the approved point of diversion for the approved beneficial use on the approved place of use subject to existing rights.

#### **PROOF OF APPROPRIATION AND CERTIFICATION**

An approved application to appropriate water grants the applicant a specific period of time (typically three years) within which to complete development of the right and put the water to the approved beneficial use. At the end of the time period and after any approved extensions have passed, the applicant must file a proof of appropriation with the State Engineer. Upon receipt of an adequate proof of appropriation for the right, the State Engineer issues a certificate of appropriation finalizing the application process. The certified application is prima facie evidence of the right to use the water in accordance with the approved application.

#### **CHANGE APPLICATIONS**

The owner of a water right, either before or after certification, may change the point of diversion, place of use, or the nature of beneficial use by filing and obtaining the State Engineer’s approval of a change application following appropriate notice and review. Thus, an approved water right for irrigating land may be changed to a right for providing domestic water on the same or different land only through an approved change application. Such changes in beneficial use may result in adjustments in the quantity of water that may be used under the right. For example, change from irrigation, which is a partially consumptive seasonal use, to domestic, which is a fully consumptive, year-long use, may result in a substantial reduction in the approved quantity of water that may be diverted and used for such alternative purposes, although the total volume of water consumed should remain the same.

#### **TRANSFER**

Water rights may be transferred by deed. Transfers of water rights should be recorded in the appropriate county and must be filed with the State Engineer to allow the Division of Water Rights to



update its ownership records. Water shares in a water company may be transferred by assignment in accordance with the corporate By-Laws.

#### **FORFEITURE FOR NONUSE**

An otherwise valid water right may be forfeited through abandonment or through nonuse of the water for a period of seven years.<sup>10</sup> Forfeiture can only be confirmed through a judicial decree.

#### **WINTERS DOCTRINE**

Water rights are subject to the federal doctrine of reserved water rights, known as the Winters Doctrine, based on a 1908 decision of the United States Supreme Court. The doctrine recognizes that when Congress set aside public lands for a Native American reservation or other purpose such as national parks, forests, and wildlife reserves, it also implicitly reserved sufficient water to serve the purposes for which the public lands were set aside. These federally reserved water rights may not be quantified and may have a priority date that goes back at least as far as the date on which the lands were set aside for public use.

#### **STREAM ALTERATION**

Utah water law requires written approval from the State Engineer to relocate any natural stream channel or to alter or change the beds or banks of any natural stream. The State Engineer must determine that the proposed action will not unreasonably or unnecessarily endanger aquatic wildlife.

#### **MINERAL RIGHTS**

Under Utah law, mineral rights are severable from the surface rights in property. Thus, one party may own the surface rights and another may own the mineral rights in the same parcel of property. Minerals may have been severed from the surface by operation of federal land laws when the lands were first transferred out of federal ownership (e.g. homestead lands). The relative rights of surface are determined in large part by the provisions of the specific conveyances and statutes under which the minerals were severed from the surface. Each party is entitled to the use and enjoyment of his or her property interest to the highest degree possible not inconsistent with the rights of the other. As a general rule under Utah law, however, the mineral estate is considered dominant, which therefore, entitles the mineral owner to the right to access and use the surface of the property as reasonably necessary for extracting the minerals.

Development of the minerals in Utah is regulated by the Utah Division of Oil, Gas and Mining under specific laws governing non-coal mining and reclamation, coal mining and regulation, and oil and gas conservation. Utah's mining and reclamation laws require mine operators to obtain the Division's review and approval of their plan to operations and to post adequate financial assurance to ensure proper reclamation of the mined land. Utah's oil and gas conservation laws provide for the orderly development of the oil and gas resources of the state in a manner that prevents waste, maximizes ultimate recover, and protects the correlative rights of all owners. The Division regulates the drilling and density of wells and upon the application of an operator or other interest owner defines the geographic area of the property interests that will share in production or by issuing well spacing and pooling orders or approving field-wide unit operations.

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<sup>10</sup> Utah Code Ann. § 73-1-4.

