

1980

Walter Wallis and Marleen Wallis v. H. E. Thomas et al : Appendix

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

WALTER WALLIS and MARLENE
WALLIS,

Plaintiffs - Respondents,

vs

H.E. THOMAS, INTERNATIONAL
EQUITIES, INC., NATIONAL
FUND, INC., and AMERICAN
SAVINGS & LOAN ASSOCIATION,

Defendants - Appellants.

Case No. 17051

WALTER WALLIS and MARLENE
WALLIS,

Plaintiffs - Respondents,

vs

H.E. THOMAS, INTERNATIONAL
EQUITIES, INC., NATIONAL
FUND, INC., AMERICAN SAVINGS
& LOAN ASSOCIATION, and GLEN
JUSTICE MORTGAGE COMPANY, INC.

Defendants - Appellants,

APPENDIX

Appeal from a Judgment of the District Court
Salt Lake County
Honorable G. Hal Taylor, Judge

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CHAPTER 11

LAND SALES PRACTICES

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57-11-1. Citation of act.—This act shall be known and may be cited as the "Utah Uniform Land Sales Practices Act."

History: L. 1973, ch. 158, § 1.

Title of Act.

An act repealing sections 61-2-15 and 61-2-16, Utah Code Annotated 1953; relating to sales of land; providing definitions; providing for the administration of the act; providing for persons, sales and lands exempt from the provisions of this act; prohibiting certain dispositions of interests in subdivisions; providing for registration of subdivisions and subdivided lands; providing information to be provided in applications for registration of subdivisions and subdivided lands; providing fees for the application for registration for consolidation; providing the provisions which shall be contained in a public offering statement; providing for amendments to proposed public offering statements; providing for an examination and inquiry into the information set forth in the application for registration; providing for the issuance of a notice of filing and registration by the division; providing for

acceptance or rejection of the application; providing for annual renewal reports; providing the general powers and duties of the division in relation to this act; providing for investigations and other proceedings by the division; providing for cease and desist orders; providing procedures for revocation of registration; providing for judicial review; establishing criminal and civil remedies and penalties; providing that the attorney general and its staff shall act as counsel for the division; establishing the jurisdiction of the courts for actions under this act; providing for interstate rendition of the provisions of the act; providing for service of process; repealing the provisions relating to the sale or offers for sale of agricultural lands for colonization purposes, farm acreage subdivisions, or rural settlement or townsites and the approval of the real estate commission of advertising used therefor; providing for uniformity of interpretation; providing severability clause; and providing an effective date and transition period.

57-11-2. Definition of terms.—As used in this act:

(1) "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit, except it does not include the sale or lease of land held by railroads for right of way purposes when said land is within 400 feet of the center line of any railroad track;

(2) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(3) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

(4) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;

(5) "Subdivider" means the owner of any interest in subdivided lands who offers them for disposition or the principal agent of an inactive owner;

(6) "Subdivision" and "subdivided lands" means any land which is divided or is proposed to be divided for the purpose of disposition into ten or more units and also includes any land whether contiguous or not if ten or more units are offered as a part of a common promotional plan of advertising and sale. Where any subdivision is offered by a single developer, or a group of developers acting in concert, and that land is contiguous or is known, designated or advertised as a common tract or by a common name, that land shall be presumed, without regard to the number of units covered by each individual offering, to be part of a common promotional plan;

(7) "Unit" includes any lot, parcel, or other interest in land which is separately offered for disposition;

(8) "Residential building" means any structure intended for occupation as a residence which, at the time of an offer or disposition of the unit on which it is situated, or on which there is a legal obligation on the part of the seller to complete construction of it within two years from date of disposition, has, or if completed would have, ready access to water, gas, electricity and roads;

(9) "Federal act" means the Federal Interstate Land Sales Full Disclosure Act (15 U.S.C., section 1701, et seq.) or any successor federal act.

History: L. 1973, ch. 158, § 2.

57-11-3. Administration by real estate division of department of business regulation.—This act shall be administered by the real estate division of the department of business regulation which hereinafter is referred to as the division.

History: L. 1973, ch. 158, § 3.

57-11-4. Exemptions.—(1) Unless the method of disposition is adopted for the purpose of evasion of this act, or the provisions of the federal act, the provisions of this act do not apply to offers or dispositions of an interest in land:

(a) By a purchaser of subdivided lands for his own account in a single or isolated transaction;

(b) On each unit of which there is a residential, commercial, or industrial building, or on each unit of which there is a legal obligation on the part of the seller to complete construction of such a building within two years from date of disposition;

(c) To any person who acquires that interest for use in the business of constructing residential, commercial, or industrial buildings; or to any person who acquires that type of land for the purpose of disposition to a person engaged in such business. This exemption shall not apply if the person who acquires land for these purposes sells that land to individuals as unimproved lots with no legal obligation on the part of the seller to construct a residential, commercial, or industrial building on that lot within two years from the date of disposition;

(d) Pursuant to court order;

(e) By any government or government agency; or

(f) As cemetery lots.

(2) Unless the method of disposition is adopted for the purpose of evasion of this act or the provisions of the federal act, the provisions of this act, except as specifically designated, do not apply to:

(a) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust on real estate;

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state statute or any federal statute;

(c) Offers or dispositions of subdivided lands registered under the federal act and which the division finds it is in the public interest to exempt from the registration requirements of this act. A subdivider seeking to qualify under this exemption shall file with the division a copy of an effective statement of record filed with the secretary of the Department of Housing and Urban Development together with a filing fee of \$25. In the event the subdivider does not qualify under this exemption, this amount shall be credited to the filing fee required for registration under this act. Nothing in this paragraph shall exempt a subdivider from the provisions of sections 57-11-16 and 57-11-17;

(d) Offers or dispositions of securities currently registered with the securities commission of this state; or

(e) ~~Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein~~ if the offers or dispositions of those interests are regulated as securities by the United States or by the securities commission of this state.

History: L. 1973, ch. 158, § 4.

57-11-5. Registration, public offering statement and receipt required for offer or disposition of interest in subdivided lands.—Unless the subdivided lands or the transaction is exempt under section 57-11-4:

(1) No persons shall offer or dispose of any interest in subdivided lands located in this state nor offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this act;

(2) No person may dispose of any interest in subdivided lands unless an effective current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity, not to be less than 48 hours, to examine the public offering statement prior to his signing the contract or agreement of disposition. If the purchaser has received such a public offering statement less than 48 hours prior to his signing the contract or agreement of disposition, the contract or agreement shall be voidable at the option of the purchaser within 48 hours after his signing it. The contract or agreement of disposition shall clearly provide in writing for this option in that event, which provision shall not be waived; and

(3) No person shall dispose of any interest in subdivided lands without first requiring a dated, signed receipt for the public offering statement in a form to be approved by the division, from each purchaser and the subdivider shall retain each receipt for two years from the date of its execution. All receipts shall be made available for inspection upon request by the division. Failure to comply with this subsection shall not constitute a cause of action under section 57-11-17 but shall be grounds for appropriate action by the division under sections 57-11-13 and 57-11-14.

History: L. 1973, ch. 158, § 5.

57-11-6. Application for registration—Required documents and information—Filing fee and deposit—Consolidation of registration of additional lands—Reports of changes.—(1) The application for registration of subdivided lands shall be filed as prescribed by the division's rules and shall contain the following documents and information:

(a) An irrevocable appointment of the division to receive service of any lawful process in any noncriminal proceeding arising under this act against the applicant or his personal representative;

(b) A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the units, and the relation of the subdivided lands to existing streets, roads and other off-site improvements;

(c) The states or jurisdictions, including the United States, in which an application for registration or similar document has been filed, and a copy of any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(d) The applicant's name and address, and the form, date, and jurisdiction of organization; the address of each of its offices in this state; and the name and address of the individual to whom the applicant wishes to have the division direct all communications;

(e) The name, address, and principal occupation for the past five years of every director, officer or general partner of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty days of the filing of the application;

(f) A statement, in a form acceptable to the division of the condition of the title to the subdivided lands including encumbrances as of a specified date within 30 days of the date of application. If the subdivided lands are situated in this state, this statement shall be in the form of a title opinion from a title insurer qualified to engage in the title insurance business in this state or an opinion of an attorney, licensed to practice in this state and not a salaried employee, officer, or director of the applicant or owner. If the subdivided lands are situated in another jurisdiction, this statement shall be in the form of an opinion of an attorney licensed to practice in the jurisdiction where the lands are situated and not a salaried employee, officer, or director of the applicant or owner. This requirement may be met by other evidence of title acceptable to the division;

(g) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(h) Copies of the instruments by which the interest in the subdivided lands to be disposed of to the purchaser was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording. However, if any of said instruments contain any information relating to the consid-

eration paid upon the prior acquisition of the subdivided lands, said information may be blocked out;

(i) If there is a lien or encumbrance affecting more than one unit, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(j) Copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands;

(k) (i) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and of any existing or proposed taxes or special assessments which affect the subdivided lands;

(ii) If the subdivided lands are situated in this state, an opinion by an attorney, licensed to practice in this state and not a salaried employee, officer, or director of the applicant or owner, that the division proposed or made does not or will not violate any existing state statute or local ordinance and that all permits or approvals have been obtained from the applicable state or local authorities necessary for the subdivided lands to be put to the use for which they are offered except for those permits or approvals which will be granted when and only when the subdivided lands are registered under this act if the registration of those lands under this act is the only condition precedent to the granting of said permits or approvals. This opinion need not be filed in the event all lands to be disposed of are included on a subdivision plat map which has been filed and approved pursuant to Title 17;

(iii) If the subdivided lands are situated in another jurisdiction, an opinion by an attorney licensed to practice in that jurisdiction and not a salaried employee, officer, or director of the applicant or owner, that the division proposed or made does not violate any existing statute, ordinance, or other law;

(l) (i) A statement of the existing provisions for access, sewage disposal, water (including a supply of culinary water), and other public utilities in the subdivision and if they are not presently available but are feasible, the estimated cost to the purchaser of their procurement;

(ii) A statement of any improvements to be installed, the schedule for their completion, any provisions for maintenance of those improvements, and estimated costs to the purchaser;

(m) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(n) The proposed public offering statement;

(o) A copy of every public report or public offering statement or similar document filed with or issued by any agency of the United States or any state or jurisdiction; and

(p) Any other reasonable information, including any current financial statement, which the division by its rules requires for the protection of purchasers.

(2) Each application for registration of subdivided lands shall be accompanied by a filing fee in the amount of \$75 plus an additional \$1 for each unit, and a deposit of \$300 to cover all examination costs and expenses incurred by the division, which deposit shall be refunded to the extent not used together with an itemized statement from the division of all amounts it has used. If the \$300 deposit is insufficient to meet all costs and expenses of examining the subdivision, the division shall receive from the applicant or owner the excess amount upon presentation of a statement itemizing the total cost and expense of the examination.

(3) In the event the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdividing lands for disposition under the same promotional plan by filing an application for consolidation accompanied by an additional fee of \$25 plus \$1 for each additional unit if, at the time the subdivider makes the application, all of the information required by subsection (1) of this section has been brought current and covers the additional subdivided lands.

(4) The subdivider shall report any material change in the information contained in an application for registration or consolidation within fifteen days from the time that change becomes known to him.

History: L. 1973, ch. 158, § 6.

Cross-Reference.

Subdivision plat, approval by county planning commission, recording, 17-27-21.

57-11-7. Public offering statement—Contents—Restrictions on use—Alteration or amendments.—(1) Every public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the division shall be in a form prescribed by its rules and, unless otherwise provided by the division, shall include, but not be limited to, the following:

(a) The name and principal address of the subdivider and, if other than an individual, the name and principal address of each officer, director, general partner, or person occupying a similar status or performing similar functions, or other principal as defined by the rules of the division;

(b) A general description of the subdivided lands stating the total number of units in the offering;

(c) A statement summarizing in one place the significant terms of any encumbrances, easements, liens, severed interests, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit, and a statement of all existing or proposed taxes or special assessments which affect the subdivided lands;

(d) A statement of the use for which the property is offered;

(e) Information concerning any improvements, including streets, curbs, and gutters, sidewalks, water supply (including a supply of culinary water), drainage and flood control systems, irrigation systems, sewage disposal

facilities, and customary utilities, and the estimated cost to the purchaser, estimated date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands and if any of those improvements cannot presently be constructed or maintained, for any reason whatsoever, a statement clearly setting forth this fact and giving the reasons therefor;

(f) (i) A statement which indicates the existing zoning or other planned land use designation of each unit and the proposed use of each unit in the subdivision, to include, without limitation, such uses as residential dwellings, agriculture, churches, schools, low density apartments, high density apartments and hotels; and

(ii) Except where each unit in the subdivision has the same zoning or other planned land use designation and is proposed to be used for the same purpose, a subdivision map which shows such information. If the subdivision consists of more than one tract or other smaller division, the information and map required by paragraphs (i) and (ii) need only pertain to the tract or smaller division in which the units offered for disposition are located;

(g) A map, which need not be drawn to scale, enabling one unfamiliar with the area in which the subdivision is located to reach the subdivision by road or other thoroughfare from a nearby town or city; and

(h) Any additional information the division may require to assure full and fair disclosure to prospective purchasers.

(2) The public offering statement shall not be used for any promotional purposes either before registration of the subdivided lands or before the date it becomes effective, and shall be used afterwards only if it is used in its entirety. No person may advertise or represent that the division approves or recommends the subdivided lands or their disposition. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the division requires it.

(3) The division may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying and receiving approval of the division and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated, unless the subdivider has timely filed each renewal report required by section 57-11-10, and no cease and desist order issued pursuant to this act is in effect.

History: L. 1973, ch. 158, § 7.

57-11-8. Examination by division on application for registration.—Upon receipt of an application for registration in proper form, the division shall forthwith initiate an examination to determine wholly or in part that:

(1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the division in its rules and afford full and fair disclosure;

(4) The subdivider has not, or if a corporation or partnership, its officers, directors, general partners, or persons occupying a similar status or performing similar functions, or other principals as defined by the rules of the division have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order entered within the past ten years restraining a false or misleading promotional plan involving land dispositions; and

(5) The public offering statement requirements of this act have been satisfied.

History: L. 1973, ch. 158, § 8.

57-11-9. Notice of filing of application for registration—Division orders of registration or rejection.—(1) Upon receipt of the application for registration in proper form, the division shall issue a notice of filing to the applicant within five business days of the date of receipt of application. Within thirty days from the date of the notice of filing or, if no notice of filing is issued within the time required, within 35 days from the date of receipt of the application, the division shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within thirty days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(2) If the division affirmatively determines, upon inquiry and examination, that the requirements of section 57-11-8 (1) through (3) have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement. The division may further provide that the public offering statement shall not be effective until evidence of the granting of all permits or approvals necessary for the subdivided lands to be put to the use for which they are offered is obtained and made a part of the public offering statement.

(3) If the division determines upon inquiry and examination that any of the requirements of section 57-11-8 (1) through (3) has not been met, it shall notify the applicant that the application for registration or the promotional plan or plan of disposition must be corrected in the particulars specified within 15 days or within such further time as allowed by the division. If the requirements are not met within the time allowed, the divi-

sion shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

History: L. 1973, ch. 158, § 9.

57-11-10. Renewal report—Renewal fee—Examination by division—Annual reports.—(1) Within thirty days after each annual anniversary date of an order registering subdivided lands, the subdivider shall file a renewal report in the form prescribed by the rules of the division together with a renewal fee of \$25. The report shall reflect any material changes in information contained in the original application for registration including, but not limited to, any change in ownership of the subdivider. The report shall also indicate the number of units in the subdivision which have been disposed of since the entry of the order registering the subdivided lands. The division may, upon the filing of a renewal report, initiate a renewal examination of the kind described in section 57-11-8 and if it determines upon inquiry and examination that any of the requirements of section 57-11-8 (1) through (3) has not been met, it shall notify the subdivider that the report, the promotional plan or the plan of disposition must be corrected in the particulars specified within twenty days or such further time as allowed by the division. If the requirements are not met within the time allowed, the division may, notwithstanding the provisions of section 57-11-13 and without further notice, issue a cease and desist order barring further sale of the subdivided lands which shall include the findings of fact upon which the order is based. The order shall not become effective for twenty days during which time the subdivider may petition for reconsideration and is entitled to a hearing.

(2) The division in its discretion may permit the filing of annual reports within thirty days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

History: L. 1973, ch. 158, § 10.

57-11-11. Rules of division—Filing advertising material—Injunctions—Intervention by division in suits—General powers of division.—(1) The division shall prescribe reasonable rules which shall be adopted, amended or repealed only after a public hearing with notice thereof published once in a newspaper or newspapers with statewide circulation and mailed to any nonprofit organization which files a written request for notice with the division; said notice shall be published and mailed not less than twenty days prior to the hearing. The rules shall include but need not be limited to:

(a) Provisions for advertising standards to assure full and fair disclosure;

(b) Provisions for escrow or trust agreements, performance bonds or other means reasonably necessary to assure that all improvements referred to in the application for registration and advertising will be completed and

that purchasers will receive the interest in land contracted for. These provisions, however, shall not be required if the city or county in which the subdivision is located requires similar means of assurance of a nature and in an amount no less adequate than is required under said rules;

(c) Provisions for operating procedures;

(d) Provisions for a shortened form of registration in cases where the division determines that the purposes of this act do not require a subdivision to be registered pursuant to an application containing all the information required by section 57-11-6 or do not require that the public offering statement contain all the information required by section 57-11-7; and

(e) Other rules necessary and proper to accomplish the purpose of this act.

(2) The division by rule or order, after reasonable notice, may require the filing of advertising material relating to subdivided lands prior to its distribution, provided that the division must approve or reject any such advertising material within fifteen days from the receipt thereof or the material shall be deemed approved.

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, the agency, with or without prior administrative proceedings, may bring an action in the district court of the district where said person maintains his residence or a place of business or where said act or practice has occurred or is about to occur, to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The division shall not be required to post a bond in any court proceedings.

(4) The division shall be allowed to intervene in a suit involving subdivided lands, either as a party or as an amicus curiae, where it appears that the interpretation or constitutionality of any provision of law will be called into question. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the agency notice of the suit and copies of all pleadings. Failure to do so may, in the discretion of the division, constitute grounds for the division withholding any approval required by this act.

(5) The division may:

(a) Accept registrations filed in other states or with the federal government;

(b) Contract with public agencies or qualified private persons in this state or other jurisdictions to perform investigative functions;

(c) Accept grants-in-aid from any source.

(6) The division shall co-operate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices.

History: L. 1973, ch. 158, § 11.

Collateral References.

Validity and construction of regulations as to subdivision maps or plats, 11 A. L. R. 2d 524.

57-11-12. Investigatory powers and proceedings of division.—(1) The division may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the division determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this act, the division or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to any district court for an order compelling compliance.

History: L. 1973, ch. 158, § 12.

57-11-13. Enforcement powers of division—Cease and desist orders.—

(1) If the division determines after notice and hearing that a person has:

(a) Violated any provision of this act;

(b) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;

(c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the division;

(d) Disposed of any subdivided lands which have not been registered with the division; or

(e) Violated any lawful order or rule of the division;

it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative actions as in the judgment of the division will carry out the purposes of this act.

History: L. 1973, ch. 158, § 13.

57-11-14. Revocation of registration—Grounds—Suspension or revocation of real estate license.—(1) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

- (a) Failed to comply with the terms of a cease and desist order;
- (b) Been convicted in any court prior or subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions, and that the public interest requires revocation;
- (c) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
- (d) Failed faithfully to perform any stipulation or agreement made with the division as an inducement to grant any registration, to reinstate any registration, to revoke any cease and desist order, or to approve any promotional plan or public offering statement; or
- (e) Made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) If the division finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

(3) Any real estate broker or salesman violating any provisions of this act shall, in addition to any other penalty imposed by this act and subject to the provisions of section 61-2-12, or any corresponding provision of any other real estate licensing law currently in effect, have his license suspended or revoked by the division for that period of time it considers justified under the circumstances.

History: L. 1973, ch. 158, § 14.

57-11-15. Judicial review of division orders.—(1) A person who has exhausted all administrative remedies available within the division and who is aggrieved by an order pertaining to registration, a cease and desist order, an order of revocation, or any other final decision of the division is entitled to judicial review under this act. This section does not limit the utilization or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate division action or ruling is immediately reviewable if review of the final division decision would not provide an adequate remedy.

(2) Proceedings for review are instituted by filing a petition in the district court where the aggrieved person maintains his principal place of business, if situated within this state, or otherwise in the Third Judicial District, within sixty days after mailing notice of the final decision of the division or, if a rehearing is requested, within thirty days after the decision

thereon. Copies of the petition shall be served upon the division and all parties of record.

(3) The filing of the petition does not itself stay enforcement of the division decision. The division may grant, or the reviewing court may order, a stay upon appropriate terms.

(4) Within thirty days after the service of the petition, or within further time allowed by the court, the division shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the division, the court may order that the additional evidence be taken before the division upon conditions determined by the court. The division may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the division, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court shall not substitute its judgment for that of the division as to the weight of the evidence on questions of fact. The court may affirm the decision of the division or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the division;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: L. 1973, ch. 158, § 15.

57-11-16. Violations—Criminal penalty—Limitation—Duties of attorney general or county attorney.—(1) Any person who willfully violates any provision of this act or of a rule adopted under it or any person who will-

fully, in an application for registration under this act or under the ~~general~~
~~act~~ makes any untrue statement of a material fact or omits to state a
 material fact may be fined not less than \$1,000 or double the amount
 of gain from the transaction, whichever is the larger, but not more than
 \$50,000; or he may be imprisoned for not more than two years; or both.
 No indictment or information may be returned or complaint filed under
 this act more than five years after the alleged violation.

(2) The attorney general shall advise the division and its staff in
 matters requiring legal counsel or services in the exercise of the division's
 power or performance of its duties. In the prosecution or defense of any
 action in connection therewith, the attorney general or the county attorney
 of the appropriate county shall perform all necessary legal services without
 compensation other than their regular salaries.

History: L. 1973, ch. 153, § 16.

57-11-17. Violations—Civil remedies.—(1) ~~Any person who:~~

- (a) ~~Disposes of subdivided lands in violation of section 57-11-5~~
- (b) In disposing of subdivided lands, ~~makes an untrue statement~~ of a
 material fact; or
- (c) In disposing of subdivided lands, ~~omits a material fact~~ required to
 be stated in a registration statement, public offering statement, statement
 of record or public report, necessary to make the statements made not
 misleading;

~~liable as provided in this section to the purchaser unless, in the case of~~
~~an untruth or omission, it is proved that the purchaser knew of the untruth~~
~~or omission or that the person offering or disposing of subdivided lands did~~
~~not know and in the exercise of reasonable care could not have known of~~
~~the untruth or omission.~~

(2) In addition to any other remedies, the purchaser, under subsection
 (1) ~~may recover the consideration paid for the unit together with interest~~
 at the rate of 7% per year from the date of payment, property taxes paid,
 costs, and reasonable attorneys' fees, less the amount of any income received
 from the subdivided lands, upon tender of appropriate instruments of ~~re-~~
~~conveyance~~. If the purchaser no longer owns the unit, he may recover the
 amount that would be recoverable upon a tender of a reconveyance, less
 the value of the land when disposed of and less interest at the rate of 7%
 per year on that amount from the date of disposition.

(3) Every person who directly or indirectly controls a subdivider
 liable under subsection (1), every general partner, officer, or director of
 a subdivider, every person occupying a similar status or performing a
 similar function, every employee of the subdivider who materially aids in
 the disposition, and every agent who materially aids in the disposition is
 also liable jointly and severally with and to the same extent as the sub-
 divider, unless the person otherwise liable sustains the burden of proof
 that he did not know and in the exercise of reasonable care could not have
 known of the existence of the facts by reason of which the liability is

alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(4) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration, public offering statement, statement of record or public report, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(5) ~~A tender of reconveyance may be made at any time before the entry of judgment.~~

(6) A person may not recover under this section in actions commenced more than four years after his first payment of money to the subdivider in the contested action.

(7) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this act or any rule or order under it is void.

History: L. 1973, ch. 158, § 17.

57-11-18. Dispositions subject to act—Jurisdiction of district courts.—Dispositions of subdivided lands are subject to this act, and the district courts of this state have jurisdiction in claims or causes of action arising under this act, if:

(1) The subdivided lands offered for disposition are located in this state;

(2) The subdivider's principal office is located in this state; or

(3) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

History: L. 1973, ch. 158, § 18.

57-11-19. Extradition proceedings against person charged with crime.—In the proceedings for extradition of a person charged with a crime under this act, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

History: L. 1973, ch. 158, § 19.

57-11-20. Service of process.—(1) In addition to the methods of service provided for in the Utah Rules of Civil Procedure, service may be made by delivering a copy of the process to the office of the division, but it is not effective unless the plaintiff, which may be the division in a proceeding instituted by it:

(a) Forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address, and

(b) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the division to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

History: L. 1973, ch. 158, § 20.

57-11-21. Uniformity of construction.—This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: L. 1973, ch. 158, § 21.

Repealing Clause.

Section 22 of Laws 1973, ch. 158 provided: "Sections 61-2-15 and 61-2-16, Utah Code Annotated 1953, are repealed."

Separability Clause.

Section 23 of Laws 1973, ch. 158 provided: "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable."

Effective Date—Disposal offers prior to effective date.

Section 24 of Laws 1973, ch. 158 provided: "This act shall take effect August

1, 1973, notwithstanding that a subdivider may have offered to dispose of any interests in lands prior thereto which under this act would be deemed subdivided lands, provided that with respect to any subdivision for which a public report has issued and a permit to sell has been granted prior to August 1, 1973, a subdivider may comply with this act either by making application under this act by September 1, 1973, or within 30 days after the first anniversary date of the issuance of a public report and granting of a permit to sell, whichever is later, and in the latter event, by providing that information required by section 6 [57-11-6] which has not already been provided the division, together with such information as is necessary to bring current that information which has already been provided."

Exchange agreement



This agreement entered into the 8th Day of July 1975, By + between International Equities Inc. Herein after referred to as Buyer + Walter Thomas Wallis + Marlene Kay Wallis, Herein after referred to as Sellers.

Where as Sellers own a home at 9327 Marion Drive, Sandy Utah, which has a first mortgage of approx \$10,000 to first Security Bank & a Second mortgage of approx \$12,000 to Murray first thrift, which is in Default & Subject to a Sheriffs Sale July 16, 1975.

where as buyers are willing to assume these loans + give Sellers 10 acres of land in Iron County for what ever equity they might have.

It is mutually agreed by both parties that Sellers will -

- 1- Deed all title right + equity in said property to buyer ~~for~~ in exchange for said 10 acres in Iron County.
- 2- finish painting, place gravel + seed on property.
- 3- maintain said property in good repair.

Appendix II

EX-14-01

Buyer agrees

- 1 - to Deed to Seller 10 acres of property in Iron County free & clear
- 2 - allow Seller to stay in house until they find a home to move to, however not to exceed 90 Day -
- 3 - accept in trade from Seller a portion of said 10 acres at \$1500 per acre, or trade on any home owned to Seller.
- 4 - If Seller is able to arrange & complete a sale of said home within 90 Day Buyer agrees to let Seller retain all monies over 10% of sales price, plus \$600 per month rent, plus all monies expenses incurred by Buyer.

this constitutes the entire agreement between Seller & Buyer

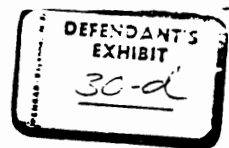
Buyer

International Equities Inc
By McNoma

Seller

Halter Thomas Heller
Marion Kay Hecox

EXCHANGE AGREEMENT



THIS AGREEMENT, entered into this 8th day of July, 1975, by and between INTERNATIONAL EQUITIES, INC., hereinafter referred to as Buyer and WALTER THOMAS WALLIS and MARLEEN KAY WALLIS, hereinafter referred to as Sellers.

WHEREAS, Sellers own a home at 9327 Maison Drive, Sandy, Utah, which has a first mortgage of approximately \$40,000.00 to First Security Bank and a second mortgage of approximately \$12,000.00 to Murray First Thrift, which is in default and subject to a Sheriff's sale July 16, 1975.

WHEREAS, Buyers are willing to assume these loans and give Seller Ten (10) Acres of land in Iron County, Utah for whatever equity they might have.

IT IS Mutually agreed by both parties that:

Seller will:

1. Deed all title, right and equity in said property to Buyer in exchange for said 10 acres in Iron County, Utah.
2. Finish painting, place gravel and sod on property.
3. Maintain said property in good repair.

Buyer agrees:

1. To deed to Seller 10 acres of property in Iron County, Utah, free and clear.
2. Allow Seller to stay in house until they find a home to move to, however, not to exceed forty-five (45) days.
3. Accept in trade from Seller a portion of said 10 acres, as trade on any home owned by Buyer that Buyer offers to Seller. However, Buyer expressly points out that at present they are not offering any home to Seller and there is no assurance they will in the future.

THIS CONTITUTES the entire Agreement between the parties and there no
other representations either expressed or implied.

Buyer:

Seller:

INTERNATIONAL EQUITIES, INC.

Walter Thomas Kellie

By

[Signature] Marceline Kay Kellie

Subscribed and sworn to before me this 8th day of July, 1975.

[Signature]
Notary Public

Salt Lake County
Residing In

Commission Expires: 2-3-79

Recorded at Request of Walter Thomas Wallis & Marleen Kay Wallis JUL 14 1975
at 10:00 M. Fee Paid \$2.00 EATNE L. DIXON, Salt Lake County Recorder
by John C. [Signature] Dep. Book _____ Page _____ Ref.: _____
Mail tax notice to _____ Address _____

2724907 WARRANTY DEED

WALTER THOMAS WALLIS and MARLEEN KAY WALLIS, husband and wife, grantor
of Salt Lake City, County of Salt Lake, State of Utah, hereby
CONVEY and WARRANT to:

INTERNATIONAL EQUITIES, INC.

of P.O. Box 147, Salt Lake City, Utah 84110 grantee
TEN DOLLARS and other good and valuable consideration for the sum of
the following described tract of land in Salt Lake County, State of Utah: ~~XXXXXX~~

Lot 3E, MONTANA RANCHOS SUBDIVISION NO. 2, according to the plat
thereof, as recorded in the office of the County Recorder of said County in
Book "NN" of Plats at page 36.

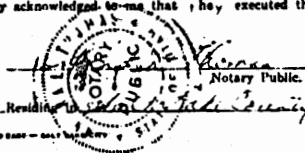
WITNESS, the hands of said grantors, this eighth day of
July, A. D. 19 75.

Signed in the Presence of

STATE OF UTAH,
County of Salt Lake }

On the 8th day of July, A. D. 1975,
personally appeared before me: Walter Thomas Wallis and Marleen Kay Wallis, husband & wife
the signers, of the within instrument, who duly acknowledged to me that they executed the
same.

My commission expires: 2-1-79



5-3513 M2 183

PLANTIFFS
EXHIBIT
- 1 -

Recorded at Request of John
at..... M. Fee Paid \$.....
by..... Dep. Book..... Page..... Ref.:
Mail tax notice to John Address 412 E. 1st St. S. L. C.

WARRANTY DEED

[CORPORATE FORM]

INTERNATIONAL EQUITIES, INC., a corporation
organized and existing under the laws of the State of Utah, with its principal office at
P.O. Box 147, S. L. C., UT, of County of SALT LAKE, State of Utah,
grantor, hereby CONVEYS AND WARRANTS to

WALTER THOMAS WALLIS AND MARLEEN KAY WALLIS, husband and wife

of Salt Lake City, Utah, grantee
TEN DOLLARS and other good and valuable consideration for the sum of
the following described tract of land in IRON County,
State of Utah:

Northeast 1/4 of Southwest 1/4 of Southwest 1/4 of Section 7, Township 33
South, Range 14 West of Salt Lake Base Meridian. Containing 10 acres more
or less.

179080 EXCEPTING therefrom all oil and mineral rights from said land as
previously reserved and/or conveyed.

Witness of Walter Thomas Wallis
My 29 10/25 92 at 2:00 P.M. 209 Page 29
John E. Thomas County Recorder
My 29 10/25 92 at 2:00 P.M. 209 Page 29

The officers who sign this deed hereby certify that this deed and the transfer represented
thereby was duly authorized under a resolution duly adopted by the board of directors of the
grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed
by its duly authorized officers this 8th day of July, A. D. 1975

Attest: John E. Thomas
Secretary.

CORPORATE SEAL

By International Equities, Inc.
President.

STATE OF UTAH,

County of UTAH

On the 8th day of July, A. D. 1975.
personally appeared before me H.E. Thomas and Sandra Thomas
who being by me duly sworn did say, each for himself, that he, the said H.E. Thomas
is the president, and he, the said Sandra Thomas is the secretary
of International Equities, Inc. Company, and that the within and foregoing
instrument was signed in behalf of said corporation by authority of a resolution of its board of
directors and said President and Secretary
each duly acknowledged to me that said corporation executed the same and that the seal affixed
is the seal of said corporation.