

1980

Hal Taylor Associates, a Utah Corporation v.
Unionamerica, Inc., a Corporation, aka Westmor;
Ramshire, Inc., a Corporation; William R.
Stevenson; Park City Reservations, Inc, a
Corporation dba Skyline Realty; Harry F. Reed and
Gary Cole : Judgment

Utah Supreme Court

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Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errorsP.S. Prince, Jr.; Attorney for Respondents Unionamerica, Inc., Ramshire, Inc., and William R. StevensonStephen G. Crockett; Attorney for Respondents Park City Reservations, Inc., Harry F. Reed and Gary ColeKent B. Linebaugh; Attorneys for Appellant

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

HAL TAYLOR ASSOCIATES, a
Utah corporation, and
HAROLD W. TAYLOR,

Plaintiffs,

vs.

UNIONAMERICA, INC., a corpora-
tion, aka WESTMOR; RAMSHIRE,
INC., a corporation; WILLIAM R.
STEVENSON; PARK CITY RESERVA-
TIONS, INC., a corporation,
dba SKYLINE REALTY; HARRY F.
REED; and GARY COLE,

Defendants.

J U D G M E N T

Civil No. 5557

The above entitled cause came on regularly for trial, without a jury, on January 14, 1980, before the Honorable James S. Sawaya, District Court Judge. Plaintiffs were represented by their counsel, Kent B. Linebaugh; defendants Unionamerica, Inc., Ramshire, and William R. Stevenson were represented by their counsel, F. S. Prince, Jr.; and defendants Park City Reservations, Inc., dba Skyline Realty, Harry F. Reed and Gary Cole were represented by their counsel, Stephen G. Crockett.

The Court having considered the evidence and the arguments of counsel, and having entered its Findings of Fact and Conclusions of Law, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That plaintiff Hal Taylor Associates have and recover from defendant Unionamerica, Inc., the sum of \$96,000.00 together with the interest that has accrued thereon in the escrow account into which said sum has been placed.
2. That defendant Park City Reservations, Inc., dba Skyline Realty, have and recover from plaintiff Hal Taylor

Associates the sum of \$57,600.00, together with the interest thereon that has accrued in the escrow account into which the \$96,000.00 has been placed.

3. The foregoing Judgment shall be satisfied by distributions from the escrow account to the parties as follows:

(a) Hal Taylor Associates and Harold W. Taylor shall receive forty percent (40%) of the \$96,000.00 deposited by Unionamerica and/or Ramshire, Inc., and in addition any interest that has accrued on the forty percent (40%) to be distributed; and

(b) Park City Reservations, Inc., dba Skyline Realty shall receive the remaining sixty percent (60%) of the \$96,000.00 deposited by Unionamerica and/or Ramshire, Inc., and in addition any interest that has accrued on the sixty percent (60%) to be distributed.

4. That Summit County Title Company, the escrow agent is hereby ordered to make such distributions from the escrow account upon receipt of this Judgment.

5. That plaintiffs have and recover from defendant, Unionamerica the sum of \$2,550.00 together with interest thereon from July 23, 1978 in the amount of \$ 328.⁰⁰, making a total judgment of \$ 2878.⁰⁰ to bear interest at the rate of eight percent (8%) per annum. at .63 / day.

6. That the parties shall bear their own costs in this matter.

MADE AND ENTERED this _____ day of _____, 1980.

BY THE COURT:

James S. Sawaya, Judge



February 17, 1977

The following sets forth the terms of an agreement between Hal Taylor, William Stevenson, Vice President of Unionamerica (Westmor), and Ray Johnson, President of Greater Park City Company, to settle the lawsuit Taylor vs. Greater Park City Company, et. al.

It is agreed that Unionamerica (Westmor) and Greater Park City Company will enter into exclusive listing agreements with Hal Taylor and Associates for the next five (5) years for all properties located within Summit County which Unionamerica (Westmor) or Greater Park City Company desire to sell with the exception of the properties actually used for skiing by Greater Park City Company.

This agreement is voided if Hal Taylor and Associates is sold in whole by Mr. Taylor and this agreement as it affects only Hal Taylor and Associates and Greater Park City Company is void if Greater Park City Company changes ownership in whole.

Unionamerica (Westmor) will immediately enter in an exclusive listing agreement with Hal Taylor and Associates for the 10.5 acres of land commonly called the "Village Land" and the approximate 8.3 acres of land commonly called "Comstock/Claimjumper II". Greater Park City Company will immediately enter into an exclusive listing agreement with Hal Taylor and Associates for the remaining Snow Country Condominiums. Further, the listing agreement between Unionamerica (Westmor) and Hal Taylor and Associates will provide for a splitting of advertising costs up to \$5,000 on a to-be-agreed-upon advertising schedule.

Twenty-Five Thousand Eight Hundred Dollars (\$25,800) will be paid to Hal Taylor and Associates as follows:

Within fifteen (15) days following dismissal of all claims, Unionamerica will pay to Hal Taylor and Associates Twelve Thousand Nine Hundred Dollars (\$12,900) cash.

Within fifteen (15) days following dismissal of all claims, Greater Park City Company will either pay a like amount or give Hal Taylor and Associates a note for Twelve Thousand Nine Hundred Dollars (\$12,900) all due and payable within one (1) year plus interest at the rate of eight and one-half percent (8.5%).

On all property listed with Taylor, he will be required to perform the usual real estate broker activities and will be entitled to a commission rate, of six percent (6%), and Taylor will further agree to a fee-splitting arrangement giving sixty percent (60%) to the selling broker and forty percent (40%) to the listing broker.

This settlement includes a dismissal with prejudice of all claims included in the above mentioned action and an agreement on the part of all parties to bear their own costs and expenses.

AGREED AND ACCEPTED:

UNIONAMERICA (Westmor)

By William R. Peterson
William R. Peterson

GREATER PARK CITY COMPANY

By Roy E. Johnson

HAL TAYLOR AND ASSOCIATES

By Hal Taylor

/slp

VACANT PROPERTY LISTING

Date Listed 2-17-77 Yes No

LOCATION VILLAGE COMPLEX - PARK CITY, UTAH Occupied by _____

City WESTMOR Address LA. CALIF Phone _____

PRICE 1,685,000 Cash Payment \$ 1/3 DOWN Balance \$ _____ Per. 2-3 YEARS including interest at _____ %

DESCRIPTION
APPROX. 10.5A. CONSISTING OF 5 SITES COMMONLY DESCRIBED AS FOLLOWS: 1.0A UNIONAMERICA SITE; 2.339A CLEMENTINE SITE; 2.570A DESTINATION SITE; 2.820A SHERATON SITE; 1.507A SITE ADJACENT TO SHERATON SITE.

SIZE OF LOT 10.5A By _____ Alley _____ Walks _____ Fences _____ Garage _____

Sidewalks Sewer Connected Curb & Gutter Pavement Taxes \$ _____
 (Note any unpaid balance to be assumed by buyer)

Mortgage { Balance _____ Due _____ Payable to _____ per mo. incl. int. at _____ %

Contract _____

Will consider exchange for N/A

Remarks: _____

HAL TAYLOR ASSOCIATES SALES AGENCY CONTRACT Company

In consideration of your agreement to list the property described above, and to use reasonable efforts to find a purchaser therefor, I hereby grant you for the period of FIVE YEARS from date hereof the exclusive right to sell or exchange said property or any part thereof, at the price and terms stated hereon, or at such other price or terms to which I/we may agree in writing.

During the life of this contract, if you find a buyer who is ready, able and willing to buy or exchange said property or any part thereof, at said price and terms, or any other price or terms, to which I may agree in writing, or if said property or any part thereof is sold or exchanged during said term by myself or any other person, firm or corporation, I agree to pay you a commission of 5% or if sold or exchanged within three months after such expiration to any person, firm or corporation to whom the property is offered, or shown by me or anyone during the term of this listing, I agree to pay you the commission above stated, and in case of the employment of an attorney to enforce this agreement or any rights arising out of the breach thereof, I agree to pay a reasonable attorney's fee and all costs of collection.

In the event that a prospective purchaser makes a deposit or part payment on said property or any part thereof and I subsequently decline a forfeiture, you are authorized to retain so much of said sum as would equal your commission if such sale had been fully consummated.

I hereby warrant the information given above to be true and that I have marketable title to said property or an otherwise established right to sell or exchange that which I am listing free from encumbrances except as stated, I agree to execute the necessary documents in proper form, final conveyance to be by warranty deed or

(deed) and to prorate general taxes, insurance, rents, interest and other expenses affecting said property to agreed date of possession, and to furnish a good marketable title with either an abstract to date or at my option a policy of title insurance in the amount of purchase price and in the name of the purchaser. In the event of sale of other than real property I agree to provide proper conveyance and acceptable evidence of title or right to sell or exchange.

You are hereby authorized to place a "For Sale" sign on said property.

City of PARK CITY, State of UTAH, this 17TH day of FEB., 1977

Accepted 17 FEB. 77 Owner William R. Kitever

Hal Taylor Assoc. Company x Ramshier, Inc Owner William R. Kitever

by Hal Taylor Salesman

I hereby acknowledge receipt of a copy of this agreement. by William R. Kitever Owner

"This is a legally binding form. If not understood, seek other advice."

State of Utah

REAL ESTATE LICENSE LAW

Title 61, Chapter 2

Utah Code Annotated 1953

As Amended By

Session Laws of Utah 1963-69

Effective July 1, 1969



Issued By

DEPARTMENT OF BUSINESS REGULATION

REAL ESTATE DIVISION

Appendix G

REAL ESTATE BROKERS AND SALESMEN

61-2-1. License Required.

It shall be unlawful for any person, partnership or corporation to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a license under the provisions of this chapter.

61-2-2. "Real Estate Broker" - "Real Estate" "Business Opportunities" Defined.

The term "real estate broker" within the meaning of this chapter shall include all persons, partnerships, associations and corporations, foreign and domestic, who for another and for a fee, commission or other valuable consideration, or who with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission or other valuable consideration, sells, exchanges, purchases, rents or leases or negotiates the sale, exchange, purchase, rental or leasing of ~~or offers or attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of,~~ ~~or lists or offers or attempts or agrees to list,~~ ~~or auctions, or offers or attempts or agrees to collect rental for the use of real estate or who advertises, who buys or offers to buy, sells or offers to sell or otherwise deals in options on real estate or the improvements thereon or who collects or offers or attempts or agrees to collect rental for the use of real estate or who advertises or holds himself, itself or themselves out as engaged in the business of selling, exchanging, purchasing, renting or leasing real estate or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is calculated to result in the sale, exchange, leasing or renting of any real estate.~~ The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary or upon a commission or upon a salary and commission basis or otherwise to sell such real estate or any parts thereof in lots or other parcels and who shall sell or exchange or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate.

The provisions of this chapter shall not apply to any person, partnership, association or corporation who as owner or lessor shall perform any of the acts aforementioned with reference to property owned or leased by such person, partnership, association or corporation nor to isolated transactions by persons holding a duly executed power of attorney from the owner nor shall this chapter be construed to include in any way the services rendered by an attorney at law in performing his duties as such attorney at law nor shall it apply to a receiver, trustee in bankruptcy, administrator, or executor, or any person acting under order of any court nor to a trustee under a deed of trust or a will nor to their employees.

The term "real estate" is used in this chapter shall include leaseholds and business opportunities.

The term "business opportunity" as used in this chapter shall mean and include an existing business, business and the good will attached thereto or any one or combination thereof.

61-2-3. "Real Estate Salesman" Defined.

~~The term "real estate salesman" shall mean and include any person employed or engaged by or on behalf of a licensed real estate broker to do or to deal in any act or transaction set out or comprehended by the definition of a real estate broker in section 61-2-2 for compensation or otherwise.~~

61-2-4. (Real Estate Broker or Salesman) - One Act for Compensation Sufficient to Constitute.

~~One act for compensation or valuable consideration, of buying selling, leasing or exchanging real estate for another, or of offering for another to buy, sell, lease or exchange real estate, except as herein specifically excepted, shall constitute the person, firm, association or corporation performing, offering or attempting to perform any of the acts enumerated herein a real estate broker or a real estate salesman within the meaning of this chapter.~~

61-2-5. Securities Commission - Board of Real Estate Examiners.

It shall be the duty of the state securities commission, herein referred to as the commission, to administer and provide for the enforcement of all provisions of this chapter. A board of real estate examiners, herein referred to as the board, and the office of real estate director, herein referred to as the director, are hereby established under the appointment, direction and supervision of the securities commission. The commission shall appoint a board of three real estate examiners, each of whom shall, for at least five years prior to the date of his appointment, have been engaged in the real estate business, and shall have been a licensed real estate broker in the state of Utah for three years next prior to his appointment. Not more than one member of the board shall be appointed from any one county in the state. The board members shall be appointed for terms of one year, two years and three years, upon creation of the board, and upon expiration of the respective terms, new appointments shall be made for terms of three years. The board of real estate examiners shall, upon its own motion or upon the verified complaint in writing of any person, cause to be made an investigation of the conduct of any licensee mentioned in the complaint, and shall make a full report and recommendation to the securities commission which then shall act as required under the provisions of this chapter.

(b) The commission is vested with the power and authority to make and enforce such rules and regulations connected with the application for any broker or salesman's license, and the revocation or suspension thereof as shall be deemed necessary to administer and enforce the provisions of this chapter.

(c) The board of real estate examiners shall meet in July, 1951 and semi-annually thereafter, for not to exceed five days per meeting except as otherwise specifically directed by the securities commission, and shall revise, if necessary, and bring to date the questions contained in the examination for broker and salesman's license, and shall make such recommendations to the commission for the conduct of the department, and the director as may be deemed advisable. Additional meetings shall be held at the call of the commission as required. The members of the board shall select a chairman and two of the members shall constitute a quorum for the transaction of business.

(d) Each member of the board shall receive as full compensation for each day or portion thereof actually spent on the work of said board the sum of \$15.00 per day, and his actual and necessary expenses incurred in the performance of his duties pertaining to this office.

(e) The director shall serve at the pleasure of the commission and the board. The duties of the director shall include:

1. Supervising applications, licenses, and preparations for examinations as directed by the board;
2. Examining records of every licensed real estate broker in the state of Utah annually, or as frequently as shall be directed by the board;
3. Other duties as designated by the commission or the board.

The commission shall fix the salary of the director and determine how much of his time shall be devoted to his work as director, and shall employ such other persons as shall be necessary to carry out the duties imposed by this act.

61-2-6. Board of Real Estate Examiners - Duties.

(a) It shall be the duty and responsibility of the board of real estate examiners to determine the qualification and requirements and to prescribe the type and content of the examinations to be passed by every applicant for a real estate broker's or salesman's license. With due regard for the paramount interest of the public, the board of real estate examiners may require and pass upon such proof as may be deemed necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant; and shall require the applicant to pass an examination, and prescribe the passing grade, covering the fundamentals of the English language, arithmetic, bookkeeping, real estate

principles and practices, including the elements of land economics, real estate law, acquisition of titles, deeds, leases, mortgages, land contracts, agency contracts, liens, zoning, taxation, and the provisions of this chapter. Three years' full-time experience as a real estate salesman or its equivalent shall be necessary before any applicant may apply for, and secure a broker's license in the state of Utah. The commission or the board shall, however, establish by regulation and accept, experience or special education in similar fields of business in lieu of the three years' experience.

License -- Application -- Bond -- Recommendation.

(b) All applications for license shall be made in writing to the commission. Every application for a broker's license shall be accompanied by a bond in the sum of \$1,000, running to the state of Utah, for the benefit of any person for whom the broker shall act, executed by two good and sufficient sureties, to be approved by the commission, or by a surety company duly authorized to do business in this state, said bond to be in form approved by the commission and conditioned that the applicant shall conduct his business in accordance with the requirements of this chapter. Every applicant for a license shall furnish a sworn statement setting forth his present address, both business and residence, the names of all places where he formerly resided, or was engaged in business, or acted as real estate salesman, for a period of sixty days or more during the preceding five years, and the length of such residence, together with the name of at least one real estate owner in each of the counties where he may have resided, engaged in business or acted as a salesman. Every application for a broker's license shall also state the name of the applicant and the location of the places for which such license is desired, and shall set forth the period of time, if any, which the applicant has been engaged in business. Every real estate broker shall be a resident of, and maintain a place of business in, this state, except as hereinafter provided. Such application shall be accompanied by the recommendation of at least three citizens who have been for three years and now are real property owners who have known the applicant for three years, and are not related to the applicant, certifying that the applicant bears a good reputation for honesty and trustworthiness, and recommending that a license be granted to the applicant. In case a real estate broker maintains more than one place of business within this state, a duplicate license shall be issued to him for each office so maintained. Each duplicate license shall be issued for a fee of \$1.00. Every applicant for salesman's license shall, in addition to the above requirements, set forth the period of time, if any, during which he has been engaged in the business, stating the name of his last employer, and the name and the place of business of the person then employing him or with whom he is to be connected.

Nonresident Broker.

(c) A nonresident of this state may become a real estate broker by conforming to all the provisions of this act, except that such non-resident broker regularly engaged in the real estate business as a vocation, and who maintains a definite place of business and is licensed in some other state,

61-2-8. Termination of Salesman's Employment -- Notice -- Return of License and Card.

When any real estate salesman shall be discharged or shall terminate his employment with the real estate broker by whom he is employed, it shall be the duty of such real estate broker to immediately deliver or mail by registered mail to the commission such real estate salesman's license. The real estate broker shall at the time of mailing such license to the commission address a communication to the last known residence address of such real estate salesman advising him that his license has been delivered or mailed to the commission. A copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the commission. It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this chapter, either directly or indirectly, under authority of said license from and after the date of its receipt from the broker by the commission. Another license shall not be issued to such real estate salesman until he shall return his former pocket card to the commission or shall satisfactorily account to it for the same. Not more than one license shall be issued to any real estate salesman for the same period of time.

61-2-9. Fees -- Expiration, renewal and revocation -- Licenses of firm, partnership or association.

(a) A fee of \$25.00 shall accompany the application to take a real estate broker's examination, and a fee of \$15.00 shall accompany the application to take a real estate salesman's examination. The examination fee shall be retained regardless of whether or not the applicant passes said examination. The first annual fee of such real estate broker's license shall be \$30.00 and the renewal fee shall be \$15.00. The first annual fee for each real estate salesman's license shall be \$10.00 and the renewal shall be \$7.00. Each real estate broker's license which may be granted to an individual shall entitle such individual to perform all of the acts contemplated by this chapter without any further application upon his part and without payment of any further fee other than the real estate broker's annual fee.

(b) Every application for a license under the provisions of this chapter shall be accompanied by the license fee herein prescribed and every license shall expire on the 31st day of December of each year. In the absence of any reason or condition which might warrant the refusal of the granting of a license, the commission shall issue a new license for each ensuing year upon receipt of the written request of the applicant and the prescribed fee therefor as required herein. If a license is not renewed on or before January 31st of each year for which it is to run, the licensee shall be placed upon an inactive roll. Upon payment of the prescribed fee for the current year and a reinstatement fee of \$20.00 the license shall be renewed without examination; provided, however, that a person not renewing his license for two successive years shall be dropped from the roll and shall be relicensed only as prescribed herein for an original application. The

revocation of a broker's license shall automatically suspend every real estate salesman's license granted to any person by virtue of his connection with the broker whose license had been revoked, pending a change of broker connections and the issuance of a new license. Such a license shall be issued without charge if granted during the same year in which the original license was granted.

(c) Each real estate broker's license granted to any firm, partnership or association consisting of more than one person, or to a corporation, shall entitle such real estate broker to designate one of its officers or members, who upon compliance with the terms of this chapter shall, without the payment of any further fee, upon issuance of said broker's license, be entitled to perform all of the acts of a real estate salesman contemplated by this chapter. The person so designated, however, must make application for a salesman's license, accompanying the application of the real estate broker. If in any case the person so designated by a real estate broker shall be refused a license by the commission, or in case such person ceases to be connected with such real estate broker, the broker shall have the right to designate another person, who shall make application as in the first instance.

(d) The commission may also charge and collect the following fees: \$5.00 for issuance of a new license because of change of name of broker; \$3.00 for certifications; for certified copies of official documents, orders, other papers and transcripts, 50 cents for each folio; \$5.00 for change of salesman from one broker to another.

61-2-10. Salesman's Right to Commission Restricted.

It shall be unlawful for any real estate salesman to accept a commission or valuable consideration for the performance of any of the acts herein specified from any person, except his employer, who must be a licensed real estate broker.

61-2-11. Revocation or Suspension of License - Grounds.

The board or the commission may upon its own motion, and shall upon the verified complaint in writing of any person, investigate or cause to be investigated the actions of any real estate broker or real estate salesman, or any person who shall assume to act as such, within this state, and may suspend or revoke any license issued under the provisions of this chapter at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee in performing or attempting to perform any of the acts mentioned in this chapter is found to be guilty of:

- ✓ (1) Making any substantial misrepresentation; or
- ✓ (2) Making any false promises of a character likely to influence, persuade or induce; or,

61-2-18. Unlicensed Broker - Action for Recovery of Compensation Prohibited -- Action by Real Estate Salesman.

(a) No person, partnership, association or corporation shall bring or maintain an action in any court of this state for the recovery of commission, a fee, or compensation for any act done or service rendered the doing or rendering of which is prohibited under the provisions of this act to other than licensed real estate brokers, unless such person was duly licensed hereunder as a real estate broker at the time of the doing of such act or the rendering of such service.

(b) No real estate salesman shall have the right to institute suit in his own name for the recovery of a fee, commission, or compensation for services as a real estate salesman except where the action is against the broker but any such action shall be instituted and brought by the broker with whom the salesman is connected.

61-2-19. Annual Report -- Disposition of Fees Collected.

On or before the 1st day of October of each year the commission shall file in the office of the governor a report containing an accurate statement of its work for the preceding fiscal year ending June 30, which report shall contain a schedule of all real estate brokers and salesmen licensed, or as to which license is pending or has been revoked, denied, enjoined or suspended. The report shall further contain a statement of the receipts and disbursements of the commission, and such other facts as may be necessary to a complete understanding of its work. All fees charged and collected under this act shall be paid by the director at least once a month, accompanied by a detailed statement, thereof, into the treasury of the state to the credit of a fund to be known as the "real estate license fund" which fund is hereby created. All moneys so paid to the treasury and credited to said fund are hereby appropriated to the use of the commission in carrying out all the provisions of this act, including the paying of salaries and all other necessary expenses. All moneys in excess of \$5,000.00 remaining to the credit of the "real estate license fund" at noon on the first day of July of each year shall, on or before the 31st day of July of said year be transferred from said fund to the general fund of the state.

61-2-20. Rights and Privileges of Real Estate Salesman -- Broker.

It is expressly provided that a real estate salesman shall have the right to fill out and complete an earnest money receipt and agreement in form to be approved by the commission and forms provided by statute and that a real estate broker shall have the right to fill out and complete forms of legal documents necessary to any real estate transaction to which the said broker is a party as principal or agent, and which forms have been approved by the commission and the attorney general of the state of Utah. Such forms shall include a closing real estate contract, a short-form lease, and a bill of sale of personal property.

STATE OF UTAH
REAL ESTATE LICENSE LAW

RULES AND REGULATIONS

These Rules and Regulations have been established by the Commission under the authority granted by 61-2-5 (b) of the Utah Code Annotated, 1953-69, as amended.

Issued By
DEPARTMENT OF BUSINESS REGULATION
Real Estate Division

11-1-73

18. **Realtor.** The use of the copyrighted name "Realtor" on stationery and signs, in advertising or otherwise, by a licensee not a member of the National Association of Real Estate Boards shall be considered as substantial misrepresentation and a cause for revocation of license.

✓ 19. **Broker - Salesman Disputes.** Brokers are required to treat salesmen and other brokers ethically and in accordance with good accepted business practices. Brokers are required to provide salesmen with terms of employment in writing to avoid misunderstanding.

The Utah Real Estate Division shall not entertain complaints by licensees regarding matters of commissions.

20. **Complaints.** An aggrieved person may file a complaint in writing against a licensee for violation of any of the provisions of the act. Licensee must file answers with the Real Estate Division within 10 days from receipt of notice from the Director. Failure to respond to letter will be considered as an additional complaint on record of broker and can be grounds for revocation of license. An investigation will be made of all complaints over which the Division has jurisdiction.

21. **Buying Properties.** A broker or salesman cannot buy for himself, either directly or indirectly, any real property, nor shall he acquire any interest in said real property without first disclosing his true position to the owner. If a commission is to be paid by the owner, this must be fully understood and shown at time of purchase and sale. Satisfactory proof of these facts must be produced by the broker or salesman upon request by the Real Estate Division.

22. **Listings.** The use of a listing contract which does not have a definite termination will be considered as detrimental to the public interest.

Listing-Protective Clause. To enforce a protective clause beyond the expiration of an exclusive listing contract, the broker must furnish to the seller, prior to the expiration, the names and addresses of all persons to whom the property was presented during the active term of the listing.

The broker upon accepting listing submitted by salesman is responsible for the accuracy of the listing.

Net listings are prohibited and should not be taken by licensee.

23. **Advertising.** Blind ads are not permitted. All advertisements must appear over the name and address of the real estate broker, as shown on the license issued by this department. Telephone numbers or names of real

CHAPTER 2

CONDUCTING BUSINESS UNDER ASSUMED NAME

- Section 42-2-1 to 42-2-4. Repealed.
 42-2-5. Certificate of assumed and of true name—Contents—Execution—Filing.
 42-2-6. Change in persons transacting business under assumed name—New certificate.
 42-2-7. Index—Fees—Evidence.
 42-2-8. Expiration of filing—Notice by secretary of state—Removal from active index.
 42-2-9. Corporate names not affected.
 42-2-10. Penalties.

42-2-1 to 42-2-4. Repealed.**Repeal.**

Sections 42-2-1 to 42-2-4 (C. L. 1917, §§ 4005, 4007 to 4009; R. S. 1933 & C. 1943, 58-2-1 to 53-2-4), relating to the filing of affidavits of assumed and true

business names and providing a penalty for noncompliance, were repealed by Laws 1963, ch. 73, § 7. For present provisions, see 42-2-5 et seq.

42-2-5. Certificate of assumed and of true name—Contents—Execution—Filing.—Every person or persons who shall carry on, conduct or transact business in this state under an assumed name, whether such business be carried on, conducted or transacted as an individual, association, partnership, corporation or otherwise, shall file in the office of the secretary of state a certificate setting forth the name under which such business is, or is to be carried on, conducted or transacted, and the full true name, or names, of the person or persons owning, and the person or persons carrying on, conducting or transacting such business, the location of the principal place of business and the post-office address, or addresses of such person or persons. Such certificate shall be executed by the person or persons owning, and the person or persons carrying on, conducting or transacting such business, and shall be filed not later than thirty days after the time of commencing to carry on, conduct or transact said business.

History: L. 1963, ch. 73, § 1.

Title of Act.

An act providing for the filing of an affidavit by persons transacting business under an assumed name and repealing chapter 2 of Title 42, Utah Code Annotated 1953.

Cross-References.

Change of name of pharmacy, 58-17-7.
 Corporate name, 16-10-7 to 16-10-10.
 Motor club's name, 41-16-6.
 Nonprofit corporation's name, 16-6-24, 16-6-25.

1. Application of statute.

Recovery for services rendered should not be precluded because there was not substantial compliance with assumed name statute if plaintiffs are otherwise entitled to judgment. *Oakason v. Lisbon Valley Uranium Co.*, 154 F. Supp. 692.

2. Affidavit.

The purpose of the filing of such affidavits or certificates is to give notice to the public as to the name or names of the persons conducting or owning the business and to protect those who transact business with persons under the assumed name. *Putnam v. Industrial Comm.*, 80 U. 187, 14 P. 2d 973.

This affidavit is generally made on a printed blank furnished by the county clerk, and must comply with this statute. A certified copy of the affidavit and of its filing is admissible in evidence and is prima facie evidence of the facts therein recited. *Putnam v. Industrial Comm.*, 80 U. 187, 14 P. 2d 973.

3. Appellate practice.

Where case originates in city court, but is appealed to district court, and defendant sets up failure to comply with this section in city court only, but does not

acting section 42-2-6.5, Utah Code Annotated 1953; relating to assumed names; providing that certificates regarding assumed names be amended when the registered office or agent changes or information required to be filed with the secretary of state changes; providing fees for amending certificates; providing that certificates

with assumed names identical to corporate or assumed names, trademarks or service marks already filed may not be filed; providing that certificates with assumed names deceptively similar to corporate or assumed names, trademarks or service marks already filed may only be filed with consent.—Laws 1979, ch. 162.

42-2-7. Index—Fees—Evidence.—The secretary of state shall keep an active alphabetical index of all persons filing the certificates provided for herein, and for indexing and filing shall collect \$10 for an original and \$5 for an amended certificate. A copy of any such certificate certified by the secretary of state shall be presumptive evidence of the facts therein contained.

History: L. 1963, ch. 73, § 2; 1977, ch. 59, § 3; 1979, ch. 162, § 2.

Compiler's Notes.

The 1977 amendment increased the filing fee from \$1.00 to \$10; and made a minor change in phraseology.

The 1979 amendment substituted "filing shall collect \$10 for an original and \$5 for an amended certificate" for "filing each certificate shall collect a fee of \$10."

42-2-8. Expiration of filing—Notice by secretary of state—Removal from active index.—A filing made pursuant to the provisions of this act shall be effective for a period of five years from the date of filing. At the expiration of that period of time if no new filing is made by or on behalf of that person or persons who made said filing, the secretary of state shall send a notice by regular mail, postage prepaid, addressed to the person or persons at their post-office address shown in the filing indicating that it has expired. If no new filing is made within thirty days after the date of mailing said notice, the secretary of state shall remove the name from the active alphabetical index, and place it on a permanent inactive alphabetical index.

History: L. 1963, ch. 73, § 4; 1977, ch. 59, § 4.

Compiler's Notes.

The 1977 amendment changed the time

period for which a filing is effective from eight years to five years; and made minor changes in phraseology.

42-2-9. Corporate names and trademark, service mark, and trade name rights not affected.—This chapter shall in no way affect or apply to any corporation duly organized under the laws of this state or under the laws of any other state, which shall carry on, conduct or transact its business under its true corporate name nor shall this chapter in any way affect the statutory or common law trademark, service mark, or trade name rights granted by state or federal statute.

History: L. 1963, ch. 73, § 5; 1977, ch. 59, § 5.

Compiler's Notes.

The 1977 amendment added "nor shall this chapter . . . federal statute" to the end of the section.

42-2-10. Penalties.—Any person or persons who shall carry on, conduct or transact any such business under an assumed name without having com-

plied with the provisions of this act shall not sue, prosecute or maintain any action, suit, counterclaim, cross complaint or proceeding in any of the courts of this state until the provisions of this chapter have been complied with.

History: L. 1963, ch. 73, § 6; 1977, ch. 59, § 6.

Compiler's Notes.

The 1977 amendment deleted a clause

at the end of the section which read: "and any such person or persons so failing to comply shall be guilty of a misdemeanor."

42-2-11. Persons doing business under assumed name to have registered office and registered agent.—Any person or persons conducting or transacting business in this state under an assumed name under this chapter shall, for service of process purposes, comply with and be subject to the provisions of sections 16-10-11, 16-10-12 and 16-10-13, as though they were corporations.

History: C. 1953, 42-2-11, enacted by L. 1977, ch. 59, § 7.

Title of Act.

An act amending sections 16-10-7 and 16-10-9 Utah Code Annotated 1953, as enacted by chapter 23, Laws of Utah 1961, as amended by chapter 21, Laws of Utah 1971, sections 42-2-7, 42-2-8, 42-2-9 and 42-2-10, Utah Code Annotated 1953, as enacted by chapter 73, Laws of Utah 1963, and section 70-3-2, Utah Code Annotated 1953, as enacted by chapter 159, Laws of Utah 1955, as amended by chapter 156, Laws of Utah 1957; and enacting section 42-2-11, Utah Code Annotated 1953; relating to trade-marks and service marks, and persons doing business under assumed

names; providing protection for the assumed name of a person or persons doing business under an assumed name; increasing to \$10 the fee for indexing and filing a certificate of doing business under an assumed name; reducing to five years the effective time period of a filing; preserving statutory and common law trade-mark and service mark rights; deleting misdemeanor penalty for doing business before compliance with certain provisions regarding doing business under an assumed name; proscribing rules for service of process on a person or persons transacting business under an assumed name; and providing that certain trade-marks and service marks may not be registered.—Laws 1977, ch. 59.