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Title 01: Abstracters and Abstracts of Title - 1943

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LAWS OF THE UNITED STATES
IN RELATION TO THE
AUTHENTICATION OF LEGISLATIVE
ACTS, JUDICIAL PROCEEDINGS,
AND OTHER RECORDS

§ 687. Authentication of legislative acts; proof of judicial proceedings of state. The acts of the legislature of any state or territory or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory or country affixed thereto. The records and judicial proceedings of the courts of any state, or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.

Source.

U. S. Code, Title 28, § 687.

§ 688. Proofs of records in offices not pertaining to courts. All records and exemplifications of books which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory,

or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

Source.

U. S. Code, Title 28, § 688.

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Title 1
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Sec. 1, p. 32

TITLE 1

ABSTRACTERS AND ABSTRACTS OF TITLE

1-0-1 to 1-0-4. (Repealed.)

L. 1937, ch. 1; eff. Mar. 3.

- 1-0-5. Title Repealed.
- 1-0-6. Prerequisites to Engaging in Business.
- 1-0-7. Board of Abstract Commissioners.
- 1-0-8. Id. Organization—Powers and Duties.
- 1-0-9. Id. Compensation.
- 1-0-10. Abstract Commission Fund.
- 1-0-11. Register of Applicants to Be Kept.
- 1-0-12. Biennial Report.
- 1-0-13. Registered Abstracters Defined.
- 1-0-14. Application for Certificate of Registration — Examinations — Fees.

- 1-0-15. Id. Form of Certificate—Fee and Renewal.
- 1-0-16. Application for Certificate of Authority—Fees—Renewals—Form of Certificate.
- 1-0-17. Id. Bond or Deposit of Securities Required.
- 1-0-18. Id. Seal.
- 1-0-19. Cancellation of Certificates—Hearings—Appeal.
- 1-0-20. Abstracts Prima Facie Evidence.
- 1-0-21. Violation of Act a Misdemeanor.
- 1-0-22. Employment of Additional Assistants.
- 1-0-23. County Recorders Exempt from Provisions.
- 1-0-24. Partial Invalidity — Saving Clause.
- 1-0-25. Effective Date.

1-0-1 to 1-0-4. (Repealed by L. 37, ch. 1, § 1, eff. Mar. 3. See 1-0-5.)

L. 1937, ch. 1; eff. Mar. 3.

AN ACT repealing Title 1, Revised Statutes of Utah, 1933, and enacting a law relating to abstracters and to the business of abstracting; creating a board of abstract commissioners; providing abstracters registration certificates and for the cancellation of the same after hearing; providing a fee for issuance of said certificates; the filing of a bond or bonds; use of a seal; and providing penalty for violation thereof.

Be it enacted by the Legislature of the State of Utah:

1-0-5. Title Repealed.

Title 1, Revised Statutes of Utah, 1933, is repealed. (Sec. 1.)

1-0-6. Prerequisites to Engaging in Business.

Except as hereinafter provided any person, firm or corporation desiring to engage in or continue the business of dealing in, making and

compiling abstracts of title to real and personal property within the State of Utah, shall have in charge of such business a registered abstracter, as hereinafter defined, and shall first obtain a certificate of authority, and file and furnish the bond or other securities required, and shall comply with the other requirements herein provided, save and except as may be hereinafter expressly excepted. (Sec. 2.)

Comparable provision.

Mont. Rev. Codes, § 4139.1 (substantially the same, but added requirement is that the person, firm or corporation must have for use in the business a set of abstract books or other system of indices or records).

Cross-references.

County recorders' powers and duties as to making abstracts, 19-18-15; recorders' fees therefor, 28-2-3; abstracts in partition cases, 104-58-48.

Decisions from other jurisdictions.

— **Montana.**

Purpose of the act is to require all abstracters to come within provisions thereof within a reasonable time; and if the board had, as indicated, issued certain certificates to which applicants were not entitled, because of lapse of time without compliance with the requirements, that fact formed no basis for declaring the law itself discriminatory. State ex rel. Freeman v. Abstracters Board of Examiners, 99 Mont. 564, 45 P.2d 668.

Mere indices of records found in county clerk's office do not constitute abstract books. State ex rel. Freeman v. Abstracters Board of Examiners, 99 Mont. 564, 45 P.2d 668.

Board did not abuse its discretion in denying relator a certificate of author-

ity, although he held a certificate as a registered abstracter, the denial not being based upon failure to comply with any rule or regulation set up by the board, but for the reason that relator did not own or control the requisite plant and tract indices prescribed by sections 1 and 11 of the Montana statute; and it was held that the act did not violate any one of the constitutional provisions on which relator relied. State ex rel. Freeman v. Abstracters Board of Examiners, 99 Mont. 564, 45 P.2d 668.

Restraining order was properly denied, inasmuch as facts disclosed necessity for installation of tract index, and county commissioners acted within sphere of their implied powers in taking steps toward such installation; and therewith the court emphasized that its ruling did not affect the conclusion reached in State ex rel. Freeman v. Abstracters Board of Examiners, 99 Mont. 564, 45 P.2d 668, on question of discrimination, since county clerk does not and cannot become a public abstracter, even with a tract index. Ransom v. Pingel, 104 Mont. 119, 65 P.2d 616.

A. L. R. note.

Right of abstractor or insurer of title to inspect or make copies of public records, 80 A. L. R. 760.

1-0-7. Board of Abstract Commissioners.

There is hereby created a board to be known as the board of abstract commissioners, to carry out the purposes and enforce the provisions of this act; said board shall consist of three members to be appointed by the governor of the State of Utah, such members shall be registered abstracters. Each member of said board shall serve thereon for a term of three years and until his successor is appointed and qualified, excepting that the first members of said board shall be appointed from abstracters who have been actively engaged in the preparation of abstracts of title in the State of Utah for at least 5 years immediately preceding the 1st day of January, 1937, and shall be appointed, one for one year, one for two years and the other for three years; the term of office to commence on the date this law goes into effect. Each member of said board shall qualify by taking the oath provided by law for public officers; vacancies on said board caused by death, resignation or otherwise shall be filled by appointment by the governor, as provided above. (Sec. 3.)

Comparable provision.

Mont. Rev. Codes, § 4139.2 (substantially identical).

1-0-8. Id. Organization—Powers and Duties.

Said board shall organize by the election of a chairman and a secretary. The secretary may or may not be a member of said board, but shall be a registered abstracter as hereinafter defined and shall be engaged in that business. The board shall have a seal and shall have the power to compel the attendance of witnesses, and the chairman and secretary shall have power to administer oaths. Said board may adopt such rules and regulations as it shall deem necessary for the proper administration of its powers and duties and the carrying out of the purposes of this act. (Sec. 4.)

Comparable provision.

Mont. Rev. Codes, § 4139.3 (identical).

1-0-9. Id. Compensation.

Each member of the board shall receive a compensation of \$10 per day for actual services while attending meetings or otherwise engaged upon business connected with the board, and shall receive five cents per mile for each mile actually traveled. (Sec. 5.)

Comparable provision.

Mont. Rev. Codes, § 4139.4 (\$5 per day for actual services; ten cents per mile for each mile actually traveled; \$5 addi-

tional per day for expenses while absent from home on business connected with the board).

1-0-10. Abstract Commission Fund.

There is hereby established a fund to be known as the abstract commission fund. All fees and moneys received under the provisions of this act shall be deposited with the state treasurer to the credit of the abstract commission fund, to meet all the expenses of the commission including office rent incurred in carrying out the provisions of this act; *provided*, the expenses of said board shall not exceed the fees collected. The state auditor is hereby authorized upon presentation of the proper vouchers or claims against the state approved by the board of abstract commissioners and state board of examiners, as provided by law, to draw his warrant upon said fund. Said fund is hereby declared to be a continuing fund and money now or hereafter to be or come into said fund are hereby appropriated for the purpose of carrying out the objects of this act and to pay all costs and expenses incurred therein or connected therewith. (Sec. 6.)

Comparable provision.

Mont. Rev. Codes § 4139.4 (includes substantially the same provision, except

that last sentence as to a continuing fund is omitted).

1-0-11. Register of Applicants to Be Kept.

Said board shall keep a register, wherein it shall enter the name of all applicants for registration, and for certificates of authority, with their place of business and such other information as may be deemed appropriate, including the action taken by said board thereon, and the

dates upon which certificates or [of] registration and certificates of authority are issued. (Sec. 7.)

Comparable provision.

Mont. Rev. Codes, § 4139.5 (substantially identical).

1-0-12. Biennial Report.

Said board shall make a biennial report to the governor, which report shall contain a full statement of its receipts and disbursements for the preceding biennial term; also a full statement of its doings and proceedings and such recommendations as to it may seem proper for the better carrying out of the intents and purposes of this act, which said report shall not be printed except at the expense of the fund herein provided for. (Sec. 8.)

Comparable provision.

Mont. Rev. Codes, § 4139.6 (identical).

1-0-13. Registered Abstracters Defined.

Registered abstracters, within the meaning of this act, shall comprise all persons who shall be granted certificates of registration by the said board of abstract commissioners after the passage of this act. (Sec. 9.)

Comparable provision.

Mont. Rev. Codes, § 4139.7 (similar as to purport).

1-0-14. Application for Certificate of Registration—Examinations—Fees.

Any person desiring to obtain a certificate of registration under this act shall make application to said board therefor and shall pay to the secretary of said board an examination fee of \$25. Such application shall be upon a form to be prepared by said board and to contain such information as may be desired by it. Thereupon said board shall fix a date and place for the examination of such applicant, of which notice shall be given to applicant by mail, who shall present himself at such meeting; whereupon said board shall proceed to examine such applicant or applicants under such rules and regulations as may be by said board prescribed. (Sec. 10.)

Comparable provision.

Mont. Rev. Codes, § 4139.8 (substantially identical).

1-0-15. Id. Form of Certificate—Fee and Renewal.

The certificate of registration issued by said board under the provisions hereof shall recite, among other things, that the holder thereof has complied with the provisions of this act relating to examination or otherwise, and shall entitle the holder of such certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority under the provisions of this act.

Certificates of registration shall be issued upon the payment of a \$5 fee and shall be valid for one year from the date thereof but shall be renewed annually by said board upon application within thirty days

prior to the expiration thereof and upon payment of \$5 to the secretary of said board. Said board may issue temporary certificates of registration in their discretion between meetings of said board. (Sec. 11.)

Comparable provision.

Mont. Rev. Codes, § 4139.10 (identical, except that renewal fee is \$1).

1-0-16. Application for Certificate of Authority—Fees—Renewals—Form of Certificate.

Any person, firm or corporation desiring to obtain a certificate of authority under this act shall make application to said board therefor and shall pay to the secretary of said board an application fee of \$5. Such application shall be upon a form to be prepared by said board and to contain such information as may be desired by it.

Every person, firm or corporation, who shall furnish satisfactory proof to said board that applicant has in charge of such business a registered abstracter, as provided for in section 1 hereof, and shall furnish the bond, or other securities, and pay the application fee herein provided, shall be entitled, upon compliance with the other provisions of this law, to receive from said board a certificate of authority.

Certificates of authority shall be valid for one year from the date thereof but shall be renewed by said board upon application within thirty days prior to the expiration thereof upon payment of \$5 to the secretary of said board, which application shall be accompanied by an affidavit and such other evidence as may be deemed necessary to show that applicant has complied with the provisions of this act.

The certificate of authority issued by said board under the provisions hereof, shall, among other things, recite that the bond or bonds, or other securities, as hereinafter required, have been duly filed and approved, and such certificate shall authorize the person, firm or corporation named in it, to engage in and carry on the business of an abstracter of titles in any county or counties of the State of Utah, in which said person, firm or corporation desires to conduct such abstract business, and for that purpose to have free access except as prohibited by statute to all records, books, accounts, maps, plats, and surveys in any office of any city, town or county, of the State of Utah and of said state, during office hours, and to make such memoranda or notation therefrom as may be necessary for the purpose of making such abstracts, and the compiling, posting, copying and keeping up of their abstract books, indices or records. (Sec. 12.)

Comparable provisions.

Mont. Rev. Codes, § 4139.11 (substantially the same; requiring, in addition, having for use a set of abstract books or system of indices as provided for in

§ 4139.1); § 4139.12, as amended by Laws 1939, Ch. 82, § 1 (dispensing with requirement of having abstract books or indices under specified conditions).

1-0-17. Id. Bond or Deposit of Securities Required.

Before a certificate of authority shall be issued, the applicant shall file with the board a bond or bonds, to be approved by it, running to the State of Utah, in the penal sum of \$10,000 in counties having cities of the first or second class and in all other counties in the sum of \$5,000

for the use of any owner, mortgagee or other person having an actual interest in the property covered by an abstract of title, who may be aggrieved; such bond or undertaking shall be conditioned for the payment by such abstracter of any and all damages that may be sustained by or may accrue to any such person by reason of or on account of any error, deficiency or mistake in any abstract or certificate of title, or any continuation thereof, made or issued by such abstracter. Said bond shall allow for operation in one county only and an additional bond shall be required for operation in each additional county. The bond or undertaking herein provided for shall be in full force and effect for a period of one year, and may be renewed annually by a continuation certificate; such continuation certificate shall not increase the amount of liability under the original bond; provided that in lieu of such bond or bonds, said applicant may deposit with the state treasurer of the State of Utah, securities as the board may prescribe, approve and deem fully sufficient to insure the payment of the penal sum or sums as above provided. Such securities so deposited may be exchanged from time to time, with the approval of the board, for other securities. The party so depositing such securities shall have the right and shall be permitted to receive the interest and dividends on the securities so deposited. Said securities shall be exempt from execution but shall be subject to sale and transfer and to the disposal of the proceeds by said board only on the order of a court of competent jurisdiction and only for the benefit of persons aggrieved as in this section provided. The state treasurer shall give his receipt for such securities, and the state shall be responsible for their custody and safe return.

Any person suffering loss because of having relied upon an abstract shall have a right of action for the amount of damages sustained; *provided*, that such liability shall not accrue in favor of any person who had actual notice of the error or mistake complained of. (Sec. 13.)

Comparable provision.

Mont. Rev. Codes, § 4139.13 (similar; bond or bonds in penal sum of \$5,000 running to State of Montana).

A. L. R. note.

Liability of abstracter to third person using abstract, 34 A. L. R. 68, 68 A. L. R. 376.

1-0-18. Id. Seal.

Any person, firm or corporation furnishing abstracts of title under the provisions hereof shall provide a seal, which seal shall have stamped thereon the name and location of such person, firm or corporation, and shall deposit with the secretary of the board an impression of such seal and the names of persons authorized to sign certificates to abstracts before the certificate of authority shall issue, which seal shall be affixed to every abstract or certificate of title issued by such person, firm or corporation, and to every continuation thereof. (Sec. 14.)

Comparable provision.

Mont. Rev. Codes, § 4139.14 (substantially identical).

1-0-19. Cancellation of Certificates—Hearings—Appeal.

The board shall have, and it is hereby given the power to cancel and revoke any certificate of registration issued to any person under the

provisions of this act for a violation of any of the provisions of this act, or upon a conviction of the holder of such certificate of a crime involving moral turpitude, or if the board finds such holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices, or for incompetency. The board shall also have and it is hereby given the power to cancel and revoke any certificate of authority issued to any person, firm or corporation under the provisions of this act for failure to furnish the bond or bonds, or other securities, required by section 12 hereof, or such new or additional bonds as the board deems necessary, or for failure to have in charge of such business a registered abstracter as herein provided, or shall otherwise violate any of the provisions of this act. Upon a verified complaint being filed with the board charging the holder of a certificate of registration with a violation of any of the provisions of this act or conviction of a crime involving moral turpitude, or with habitual carelessness, or inattention to business, or fraudulent practices, or incompetency, or charging the holder of a certificate of authority with failure to furnish the bond or bonds, or other securities, required by section 12 hereof, or such new or additional bonds, or securities, as the board deems necessary, or with failure to have in charge of his or its abstract business, a registered abstracter as herein provided, or with a violation of any of the provisions of this act, the board shall immediately notify in writing said holder of such certificate, of the filing of such complaint and furnish the said holder with a copy of the said complaint. The board shall at the same time require the holder of such certificate to appear before it on a day fixed by said board, not less than twenty nor more than forty days from the date of the service of said complaint on the holder of such certificate, and to show cause why the said certificate should not be cancelled and annulled. The board shall cause a transcript of any testimony taken, to be made by a stenographer. Either the abstracter or the complainant may appeal from the decision of the board to the district court of the county in which the abstracter has his or its place of business. Such appeal shall be taken within thirty days after the decision of the board, by causing a written notice of appeal to be served on the secretary of the board and executing a bond to the State of Utah, with surety to be approved by the secretary of the board, conditioned to prosecute such appeal to effect and to pay all costs that may be adjudged against the appellant. The secretary of the board, upon an appeal being taken, must immediately make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, including a certified record of the testimony taken at the hearing, with the clerk of the district court to which said appeal is taken. The district court shall hear the appeal in a summary manner on such record, and the cost of such appeal, including the furnishing of the testimony, shall be taxed against either the abstracter or the complainant, whichever is defeated on such appeal, except in cases in which the board has sustained the complaint the board shall bear such costs instead of complainant. An appeal shall stay the cancellation of any certificate of registration or certificate of authority until the final decision on appeal. (Sec. 15.)

Comparable provision.

Mont. Rev. Codes, § 4139.15 (substantially the same).

1-0-20. Abstracts Prima Facie Evidence.

Any abstract of title certified to be true and correct by any abstracter holding a valid and subsisting certificate of authority from the board, as herein provided, or by any county recorder shall be received by the courts of this state as prima facie evidence of its contents under such rules and regulations as to procedure as such courts may promulgate. (Sec. 16.)

Comparable provision.

Mont. Rev. Codes, § 4139.16 (substantially identical).

1-0-21. Violation of Act a Misdemeanor.

Any person, firm or corporation, making, dealing in, compiling or certifying to abstracts of title to property in this state without having complied with the provisions of this act, shall be deemed guilty of a misdemeanor. (Sec. 17.)

Comparable provision.

Mont. Rev. Codes, § 4139.17 (misdemeanor; fine of \$100 to \$600 for each offense).

1-0-22. Employment of Additional Assistants.

Nothing in this act shall be construed as prohibiting any person, firm or corporation holding a valid and subsisting certificate of authority as herein provided, from employing such additional clerical and stenographic assistants as may be necessary; *provided, however*, that such assistants are at all times under the supervision of a registered abstracter. (Sec. 18.)

Comparable provision.

Mont. Rev. Codes, § 4139.18 (includes identical provision).

1-0-23. County Recorders Exempt from Provisions.

No provision of this act shall be held to apply to any duly elected and acting recorder of any county of this state or to his right to compile abstracts of title as provided in section 19-18-15, Revised Statutes of Utah, 1933. (Sec. 19.)

Comparable provision.

Mont. Rev. Codes, § 4139.18 (provisions of act do not apply to county clerks and recorders or persons employed by counties in preparation of abstracts of title).

the preparation of "abstracts," contained in section 18 of the Montana statute, such persons are not engaged in business of abstracting titles, and do not come within competition with abstracters; and it might be doubted that any board of county commissioners having occasion to ascertain the condition of title of real property would employ others than accredited abstracters to perform the work for them. State ex rel. Freeman v. Abstracters Board of Examiners, 99 Mont. 564, 45 P.2d 668.

Cross-references.

Abstracting by recorders, 19-18-15, 28-2-3.

Decisions from other jurisdictions.**—Montana.**

As to the exception of county clerks and "persons employed by counties in

1-0-24. Partial Invalidity—Saving Clause.

If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of the same. (Sec. 20.)

1-0-25. Effective Date.

This act shall take effect upon its approval.

Approved March 3, 1937.

(Sec. 21.)