

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 45808
Salt Lake City, Utah 84145-0808
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF

WARREN KYLE FOOTE

Respondent.

**EMERGENCY ORDER TO CEASE
AND DESIST and ORDER TO
SHOW CAUSE**

Docket No. SD-07-0053

This matter comes before the Director of the Utah Division of Securities (the Division) on allegations of Division staff that Warren Kyle Foote (Foote) has engaged in acts and practices which violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Having been advised of relevant facts discovered in the course of the Division staff's investigation of this matter, the Director finds and concludes that Foote's conduct presents an immediate and significant danger to the public welfare, and that the threat requires immediate action by the Division. The Director issues this Emergency Order in accordance with the

provisions of Utah Code Ann. §63-46b-20. The Director further issues this Order to Show Cause in accordance with the provisions of Utah Code Ann. § 61-1-20 (1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of this Emergency Order and Order to Show Cause, the Division's staff has received evidence establishing the following facts:

RESPONDENT

1. Warren Kyle Foote resides in Salt Lake County, Utah.

OFFERS AND SALES OF INVESTMENT OPPORTUNITIES

Investor D. G.

2. In February or March 2006, D. G. attended a real estate seminar held by Foote at a hotel in Salt Lake City, Utah. D. G. was introduced to Foote at the conclusion of the seminar.
3. Foote told D. G. about his success in the business of hard-money lending. Foote and D. G. agreed to meet for lunch at a later date to discuss Foote's investment opportunities.
4. All communication between Foote and D. G. took place in Salt Lake County, Utah.
5. When Foote and D. G. met for a second time, Foote solicited an investment from D. G. in a deal that Foote said had the potential of producing \$5 to \$10 million in profit.
6. D. G. invested \$100,000 with Foote, and shortly thereafter, when Foote was unable to come up with Foote's half of the investment, D. G. asked for his money back.
7. Foote returned D. G.'s \$100,000, and afterwards they maintained a friendship.
8. In June or July 2006, Foote solicited another investment from D. G.

9. Foote told D. G. he had between \$6 and \$8 million invested in small businesses, and if just one of the businesses became a success, Foote stood to make a return of 400% on his investments.
10. Foote told D. G. he would take D. G.'s investment funds and invest in small businesses.
11. Foote said he would pay D. G. a return of 50% per year on the investment.
12. D. G. declined to invest.
13. In mid-July 2006, D. G. met Foote at Foote's office in Salt Lake County.
14. Foote solicited D. G. to invest \$300,000 in a land development project in Idaho (the Idaho Project).
15. Foote said he was going to purchase five lots in Idaho, and that he already had buyers lined up to purchase three of the five lots.
16. Foote told D. G. that Foote would make more from the sale of three of the lots than what Foote would pay for all five.
17. Foote said he would use the remaining two lots as collateral for other land development projects.
18. Foote said he would purchase the five lots within 30 days, and then sell three of the lots within another 60 days.
19. Foote said D. G.'s investment funds would be combined with Foote's funds as a down-payment on the five lots.
20. D. G. declined to invest \$300,000 in the Idaho Project.

21. On or about July 25, 2006, Foote went to D. G.'s home in Salt Lake County, and asked D. G. if he would invest \$30,000 in the Idaho Project.
22. Foote told D. G. that in return for the \$30,000 investment, Foote would pay D. G. a monthly return of 2% and D. G. would also receive 12% of the proceeds from the sale of the three lots.
23. Foote told D. G. he would get his investment back by August 5, 2006 (11 days), and Foote personally guaranteed that the Idaho Project would be a success.
24. Foote showed D. G. the promissory note Foote would give to D. G. if D. G. invested.
25. D. G. told Foote he would invest the \$30,000 in the Idaho Project, but only if Foote's company, Development Partners, LLC¹ (Development) appeared on the titles to the Idaho properties, and only if D. G. would get 12% of Development in the event Foote defaulted on the promissory note.
26. Foote agreed to D. G.'s additions, and used D. G.'s computer to edit the promissory note to reflect the changes.
27. The promissory note, dated July 25, 2006, in the amount of \$30,000, states that Foote will pay D. G. \$31,500 on or before July 29, 2006, or \$31,500 plus 2% interest if not paid until August 5, 2006. The promissory note goes on to state that if D. G. is not paid in full

¹ Development Partners, LLC was registered as a Utah limited liability company on July 19, 2006, and its entity status is currently "active." Foote is the registered agent, and sole manager and member of Development Partners, LLC.

by August 5, 2006, D. G. will receive 12% ownership in Development. The promissory note is signed by Foote on behalf of Development.

28. Promissory notes are securities under § 61-1-13 of the Act.
29. On or about July 25, 2006, D. G. invested \$30,000 in Foote's Idaho Project by giving Foote a cashier's check.
30. On or about August 5, 2006, D. G. Called Foote but was unable to reach him.
31. In the second week of August 2006, Foote called D. G. and told D. G. he planned to pay D. G. his principal and interest, along with 12% ownership in Development.
32. On or about November 30, 2006, Foote gave D. G. a personal check for \$27,000. D. G. was unable to cash the check because Foote's account had been closed.
33. To date, Foote has returned just \$5,000 of D. G.'s investment. D. G. is still owed \$25,000 in principal alone.

Investor S. S.

34. S. S. met Foote while preparing a story about Foote in S. S.'s magazine.
35. After the interview for S. S.'s magazine, S. S. and Foote maintained a friendship.
36. Foote told S. S. he had made money through hard-money lending, and wanted to help people by "sharing the wealth."
37. In January 2007, Foote asked S. S. to invest in three different investment opportunities. S. S. and Foote had multiple conversations about the investment opportunities, all of which took place in Salt Lake County.

38. S. S. declined, and said she was not ready to invest.
39. In late January 2007, Foote told S. S. he was working on many deals and was too busy to focus on smaller real estate deals, but that he had one last deal in which S. S. could invest.
40. Foote told S. S. the following about the real estate deal:
 - a. Foote was part of Development Partners, LLC, which managed investor funds.
 - b. Foote would bring many people into the deal, pool investor money to build up funds, and then use the funds to make hard-money loans.
 - c. Hard-money lending was very much a part of what goes on in the real estate market.
 - d. The investment opportunity in which S. S. could get involved required a pooled amount of \$109,000.
 - e. S. S.'s money would be combined with another investor's funds to make the full \$109,000.
 - f. There was no risk involved because the investment would be secured by real estate.
 - g. S. S. could sell her investment to another investor at any time if she wanted out.
 - h. An individual, R. C., was in need of \$109,000 as a bridge loan until R. C.'s mortgage came through. Foote said R. C. would need the funds for approximately 45 days, and was willing to pay a high rate of interest.

- i. The real estate deal would close on March 30, 2007, which is when S. S. would get her principal and interest.
 - j. S. S. would make at least \$7,819 from her investment, and if the closing did not take place on March 30, 2007, R. C. would have to pay S. S. \$7,819 per month until the deal closed or S. S. foreclosed on the property.
 - k. Foote would make a commission on the investment.
 - l. Even if S. S. had to foreclose, S. S. would make money on the deal.
 - m. Foote had prior investors, and had made one couple, T. L. and L. L., a lot of money.
41. The investment opportunity offered by Foote to S. S. is an investment contract, and therefore a security, under § 61-1-13 of the Act. An investment contract includes “any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor.” UTAH ADMIN. CODE R164-13-1(B)(1).
42. In February 2007, Foote asked S. S. how much money she could invest.
43. S. S. told Foote she had checked her finances and could get \$50,000 from a home equity loan.
44. Foote agreed to take S. S.’s investment funds, and said another investor would cover the remaining \$59,000 to come up with the total \$109,000 needed.
45. Foote gave S. S. a form to sign, which authorized Development to “oversee the lending of

funds to [R. C.],” and included certain restrictions. Some of the restrictions included that S. S. must be named on the title to R. C.’s property, S. S. must receive payment in full no later than March 30, 2007, and that R. C. must pay 7.5% interest per month. S. S. signed the form, which is dated February 6, 2007.

46. On or about February 6, 2007, S. S. invested by wiring \$50,000 to Foote’s bank account.
47. S. S.’s \$50,000 was deposited into Foote’s account at Bank of the West on or about February 6, 2007, bringing the account balance to \$47,481.46.
48. Foote used S. S.’s money to pay payroll, commissions, utilities fees, rent, cell phone bills, and to pay money owed to a collection agency.
49. By February 22, 2007, Foote’s bank account was closed with a balance of \$0.
50. In early April 2007, Foote gave S. S. three separate documents, entitled “Note Secured by Mortgage,” “Statement of Settlement,” and “Real Estate Mortgage,” after S. S. requested additional documentation of her investment. Each document appears to have been signed by R. C., and all are dated February 6, 2007.
51. On April 18, 2007, after making several demands for Foote to return her investment, Foote met S. S. at a US Bank and gave S. S. two official checks: one for \$7,819 and the other for \$982, both made payable to S.S. The \$7,819 check was for interest due on the investment, and the \$982 was to cover payments S. S. made on the home equity loan she used to invest.
52. As of today’s date S. S. is still owed \$41,199 in principal alone and continues to pay

interest on her home equity loan.

MISREPRESENTATIONS, OMISSIONS, FRAUDULENT PRACTICES

53. In connection with the offer and sale of securities in this state, Foote made misrepresentations of material facts and omitted to state material facts.
54. The material misrepresentations made by Foote include, but are not limited to, the following:
 - a. Foote told D. G. he was guaranteed to make a return of 2% monthly from an investment in the Idaho Project in 11 days, in addition to 12% of the proceeds from the sale of three lots.
 - b. Foote told D. G. he would receive 12% ownership of Development if Foote defaulted on the promissory note.
 - c. Foote told S. S. he would bring in many investors, pool their money, and use the funds to make hard-money loans.
 - d. Foote told S. S. the project in which she was investing required a pooled amount of \$109,000.
 - e. Foote told S. S. there was no risk involved because her investment was secured by real estate.
 - f. Foote told S. S. he had made a lot of money for prior investors (T.L. and L.L.), when in fact, by the time S. S. invested, T.L. and L.L. had hired an attorney to try and get their investment back from Foote.

- g. Foote told S. S. her money would be used to provide a bridge loan to R. C., who needed the money until he obtained a mortgage.
 - h. Foote told S. S. she would receive at least \$7,819 (approx. 16% return) from her investment, and if the deal did not close on March 30, 2007, R. C. would have to pay S. S. \$7,819 per month until the deal closed or S. S. foreclosed on the property.
 - i. Foote told S. S. if she had to foreclose on R. C.'s property, she would still make money on the deal.
 - k. Foote told S. S. that she could sell her investment to another investor at any time if she wanted out.
55. Foote omitted to disclose material information to investors about the investment. The information that should have been disclosed includes, but is not limited to the, following:
- a. That Foote filed for bankruptcy on December 1, 2004.
 - b. That when D. G. invested, Foote had unpaid civil judgments against him in the amount of \$2,449.37.
 - c. That when S. S. invested, Foote had unpaid civil judgments against him in the amount of \$8,620.12.
 - d. That Foote would use S. S.'s investment funds for personal expenses.
 - e. That when S. S. invested, Foote had already failed to pay back D. G.'s investment.
 - f. That when S. S. invested, one of Foote's prior investors had hired an attorney to

collect invested funds from Foote.

DANGER OF IMMEDIATE HARM TO THE PUBLIC

56. Foote has solicited and accepted as much as \$50,000 from investors while prior investors have gone unpaid. Those solicitations occurred at a time when Foote had unpaid civil judgments against him of as much as \$8,620.12. The Division has reason to believe that Foote has continued to solicit investor funds, as recently as July 2007.
57. The Division believes that Foote will continue to offer and sell securities in this state, by means of misleading and fraudulent statements.

EMERGENCY ORDER

1. The Director finds and concludes that given Foote's past pattern of continued solicitation of investors, and in light of evidence of solicitations of Utah residents as recently as July 2007, Foote poses an immediate and significant danger to the public welfare because the securities offered involve fraudulent conduct.
2. In light of the foregoing and in order to prevent or avoid further danger to the public welfare, it is hereby ORDERED in accordance with Utah Code Ann. § 63-46b-20 that:
 - a. Warren Kyle Foote shall immediately CEASE AND DESIST from selling securities in this State by means of misrepresentations and omissions of material fact.
 - b. Warren Kyle Foote shall immediately CEASE AND DESIST from any other violations of the Act.

3. Foote is advised that, pursuant to the Utah Code Ann. § 61-1-21, any violation of this Emergency Order is punishable as a third-degree felony.

ORDER TO SHOW CAUSE

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders Warren Kyle Foote to appear at a formal hearing to be conducted in accordance with Utah Code Ann. § 63-46b-4 and 63-46b-5, and held before the Utah Division of Securities. The hearing will occur on Thursday, September 13th, 2007 at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, Salt Lake City, Utah 84114, telephone (801) 530-6001. The Division will be represented by Assistant Attorney General Jeff Buckner, 160 East 300 South #500, Salt Lake City, Utah 84114. Respondents may elect to be represented by counsel. If any Respondent fails to appear at the hearing, an order to cease and desist may be issued and a fine imposed by default against that Respondent, as provided by Utah Code Ann. § 63-46b-11. At the hearing, Respondents may show cause, if any they have:

1. Why Warren Kyle Foote should not be ordered permanently to CEASE AND DESIST from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act.

2. Why Warren Kyle Foote should not be ordered to pay a fine to the Division in the amount of \$100,000.

DATED this 9th day of August 9, 2007.

A handwritten signature in black ink, appearing to read "Thad Levar", written over a horizontal line.

Thad Levar
Deputy Director
Department of Commerce

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

WARREN KYLE FOOTE

Respondent.

NOTICE OF AGENCY ACTION

Docket No. SD-07-0053

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include the information required by Utah Code § 63-46b-6 (1). In addition, you are required by § 63-46b-6 (3) to state: a) by paragraph, whether

you admit or deny each allegation contained in the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission; b) any additional facts or documents which you assert are relevant in light of the allegations made; and c) any affirmative defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Order to Show Cause are not disputed in your Answer, they will be deemed admitted.

Your Answer, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Pam Radzinski
Division of Securities
160 E. 300 S., Second Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

Jeff Buckner
Assistant Attorney General
160 E. 300 S., Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

A hearing date has been set for Thursday, September 13, 2007, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah.

If you fail to file an Answer, as set forth herein, or fail to appear at the hearing, the Division of Securities may hold you in default, and a fine and other sanctions may be imposed

against you in accordance with Utah Code Ann. § 63-46b-11, without the necessity of providing you with any further notice. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, you may appear and be heard and present evidence on your behalf. You may be represented by counsel during these proceedings.

The presiding officer in this case is Wayne Klein, Director, Division of Securities. Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

DATED this 9th day of August, 2007.


THAD LEVAR
Deputy Director
Utah Department of Commerce

Certificate of Mailing

I certify that on the 13TH day of August, 2007, I mailed, by certified mail, a true and correct copy of the Emergency Order to Cease and Desist and Order to Show Cause, and Notice of Agency Action to:

Warren Kyle Foote
2150 S. 1300 E. #500
Salt Lake City, UT 84106

Certified Mail # 7005 1820 0003 7191 3081

Warren Kyle Foote
1051 Hollywood Ave.
Salt Lake City, UT 84105

Certified Mail # 7005 1820 0003 7191 3098

Warren Kyle Foote
10 W. Broadway, Suite 505
Salt Lake City, UT 84101

Certified Mail # 7005 1820 0003 7191 3104

Warren Kyle Foote
843 S. 1900 E.
Salt Lake City, UT 84108

Certified Mail # 7005 1820 0003 7191 3111


Executive Secretary