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4th Quarter 2020 Real Estate Newsletter

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Director's Message – Division Updates

What a year! We've all had to adjust many things we probably took for granted, and the Division of Real Estate is no different. The Division had to adapt quickly to allow for CE courses to be taught virtually. We had to cancel CARAVAN for the first time in over 30 years. Our Instructor Development Workshop was held live and virtually for the first time. And of all the years to implement the new requirement of fingerprinting, it had to be the year of a global pandemic! We made it through, and we appreciate your patience with us as we navigated the ever-changing landscape of 2020.



Fingerprinting

Fingerprinting for those **RENEWING** their license is still suspended. **Only initial applicants and those conditionally licensed between September 1st and October 31st should be getting fingerprinted at this time (see conditional licensing below).**

Fingerprinting remains a challenge. We continue to evaluate the COVID-19 case numbers and guidance from the Utah Department of Health in making our decisions, but for now, fingerprinting is again delayed for those with January expiration dates. Fingerprinting could very well be delayed until sometime in mid-2021. Please continue to check the Division's home page for the most current information — it is updated by the 15th of each month. When we resume fingerprinting, it will be in conjunction with each licensee's renewal date, and we will give plenty of notice. **Please do not get fingerprinted unless you are a new applicant or were conditionally licensed. Being fingerprinted outside of these two scenarios may cause you to be fingerprinted again when you renew your license.**

Conditional Licensing

In March, our testing provider Pearson Vue, notified us that they would be suspending fingerprinting and testing services. Testing resumed at 50% capacity on May 1st, but fingerprinting services were still suspended. In addition, eighteen third-party testing sites were opened to help with the backlog of applicants waiting to test; unfortunately these third-party testing sites did not offer fingerprinting services. In an effort to prevent further delays, the Division allowed new real estate and appraisal candidates to be licensed on a conditional basis. Licenses were issued with the understanding that new licensees agreed to be fingerprinted at a later date or their license would be suspended. To date, there have been two phases of conditional licensing.

Conditional Licensing Phase 1

Real Estate and Appraisal applicants who passed their exam and applied for a license between March 15th and August 31st were conditionally licensed without being fingerprinted. At the time their license was issued, they were informed that their license was conditional and they needed to be fingerprinted by September 30, 2020. The Division sent multiple emails to conditionally licensed individuals about the upcoming deadline. Even with multiple emails, we had approximately 300 conditionally licensed individuals who failed to get fingerprinted by the deadline.

We ultimately decided to extend the deadline to November 2nd. We sent additional email notifications and attempted to contact the brokers of all conditionally licensed agents who had failed to submit fingerprints, and on November 2nd we suspended approximately 30 licensees. We received a phone call from one licensee who told us we should have given them some warning before suspending their license even though we sent several emails leading up to the September 30th and November 2nd deadlines. Please make sure you are receiving and reading Division emails.

All licensees issued a conditional license that successfully submitted fingerprints to the Division have now been unconditionally licensed. As of December 31st, we have **9** Phase 1 licensees who have failed to submit fingerprints and their licenses continue to be held on suspended status.

Conditional Licensing Phase 2

Pearson Vue began fingerprinting testing candidates on September 1st. Because of the number of testing applicants, it was determined that third-party testing sites would need to continue to be utilized to ensure sufficient capacity. Unfortunately, as stated earlier, third-party testing sites do not offer fingerprinting services.

Applicants who tested at a third-party site needed to be fingerprinted either at a main Pearson Vue testing site or from a third-party vendor. This required us to start Phase 2 of conditional licensing. New real estate and appraisal licensees who passed their test but could not be fingerprinted between September 1st and October 31st were issued conditional licenses. These licensees were required to submit fingerprints by December 31, 2020 or their license would be suspended. As of December 31st, **28** Phase 2 licensees have not submitted fingerprints to the Division.

Drop Box in Lobby

As we highlighted in our last newsletter, we have now added a drop box to our lobby. If licensees or applicants need to deliver something to the Division, they are welcome to place it in the drop box during regular business hours. The drop box is checked twice a day and will remain in the lobby until the Heber Wells Building is open to the public.

Website Update

The Division of Real Estate is currently working to update our website. The web developers have asked that we find one or two volunteers from each industry to test the new site during the development stage – ideally licensees who are familiar with the Division's current webpage. Those who volunteer will be able to give us valuable feedback about the design, functionality, and layout of our new website before it goes live. If you would be willing to assist the Division in this effort, please send an email to realestate@utah.gov.

We wish you all a Happy New Year and a safe and successful 2021!

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Rule Developments Since October 1, 2020

To view and comment on any proposed or amended rules during the public comment period, please visit the Utah State Bulletin at <https://rules.utah.gov/publications/utah-state-bull/>

Appraisal Management Company Rules

There are no recently adopted or proposed rule amendments under consideration for the Appraisal Management Company rules.

Appraisal

The Real Estate Appraiser Licensing and Certification Administrative Rules, R162-2g, were amended on June 30, 2020. Subsection 502(8) was added to the rules at that time. The addition of Subsection 502(8) was intended to clarify the rule relating to property inspections. However, members of the appraisal management industry have raised questions and concerns about Subsection 502(8) and the collection of property data for use in an appraisal. The Appraisal Board has since approved a proposal to delete Subsection 502(8) from the rule. A proposal to delete Subsection 502(8) is being prepared at this time and the proposed amendment will soon be published and available for public comment.

Mortgage

There are no recently adopted or proposed rule amendments under consideration for the Utah Residential Mortgage Practices and Licensing Rules.

Real Estate

The Real Estate Licensing and Practices Rules, R162-2f, were amended on October 21, 2020. The sections amended include:

Section 201 – this amendment eliminates the mandatory denial of an application for licensure of a person who has entered into a felony plea agreement within five years of the date of application.

Section 202b – now allows the term "escrow account" as an alternative name for a trust account.

Sections 203 and 204 – add a requirement to complete the mandatory 3-hour continuing education before a person who was issued an inactive license at the time of their last renewal and their license is currently on inactive status, or a person reinstating an expired license, can activate or reinstate the license. Previously, only a person with an active license was required to complete the course. The mandatory

3-hour course does not add additional hours of required continuing education but satisfies three hours of the nine core class hours previously required.

Sections 205, 207, 401a, 401b, 401h, and 401j – now have a four-year time limit for the enforcement of a violation of certain provisions of these sections.

Section 401c – has resolved overlap and inconsistencies between Utah law and other Administrative Rules relative to the obligation of a real estate broker to supervise affiliated sales agents and unlicensed staff.

Section 403a – amended the rule to require a principal broker to remit unclaimed funds to the State Treasurer's Office within three years as required by Utah law.

Section 403b – increased the amount of a broker's own funds that can be held in a real estate trust account from \$500 to \$1,000 consistent with current banking practices and account fee schedules.

The Real Estate Commission has established a committee to consider an amendment to the trust account rules. A proposed rule amendment is being prepared, but has not yet been completed or approved by the Real Estate Commission.

Timeshare and Camp Resort

There are no recently adopted or proposed rule amendments under consideration.

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Mortgage License Renewal

The 2020 Mortgage License Renewal cycle has come to an end. This year, all mortgage licensees were required to authorize a criminal background check (CBC) and credit history with their 2021 renewal request. In addition, all MLOs newly licensed in 2019 and 2020 were required to complete the 5-Hour Utah MLO CE Course. These additional specific renewal requirements have been a challenge for the Division. The Division currently has 8,257 licensees eligible to renew for the 2021 year. At the time of this writing, 86% of our licensees have requested their renewal and 91% of submitted applications have been approved. There are 627 individuals who have not had their license application renewal approved. 1,138 licensees have not requested license renewal. Some delays are a result of pending, uncleared deficiencies on individuals' licenses. Other delays are merely the result of multiple renewal requirements that are still being conscientiously considered by the Division. Other delays will be a result of late submission.

What you need to know about your renewal:

If you have not received an email confirmation through the NMLS system that your license renewal is approved and you requested it more than two weeks ago, please log into your filing and see if there are deficiencies on your license (license items) that are holding up the approval. If you requested your renewal prior to the December 31, 2020 deadline, you can continue to use your license in the status it was in at the time of your renewal request while we process your license renewal. In addition to receiving a confirmation email from the NMLS stating that your renewal has been approved, you will also receive an email from the Division with your Mortgage license attached. You may print your license at your convenience.

For those who have not received an approved renewal email, please check your NMLS filing in the following manner: Log into your NMLS account and under "composite view," click on "view individual" on the submenu, then find the "license items" hyperlink next to your Utah DRE license. Generally, there are corrections or additions required on your filing that you can take care of fairly easily. If you see a deficiency for failure to complete the Utah two hour Utah Law course and you know you completed it, please contact your education provider.

In January, renewal requests that continue to have licensing deficiencies, will be placed on inactive status.

If you failed to request your renewal before year-end, you should immediately discontinue any activity that requires a mortgage license.

If you have not requested renewal prior to the end of the year and you still wish to maintain your mortgage license, you can apply to reinstate your license prior to February 28, 2021.

You will still need to complete the 2020 late CE before you can request the reinstatement your license. Once you have completed the late CE you will be able to request reinstatement and authorize your CBC and credit check. You will request your reinstatement through the NMLS, pay the renewal fee, and the **late** fee. There is an additional **\$50 late fee** for the reinstatement. If you completed your CE prior to the end of the year, but did not request renewal by December 31, 2020, you will not need additional CE, you will only need to request and pay the renewal and late fee through NMLS prior to February 28, 2021. **You will not be able to resume licensing activities until your reinstatement request has been approved by the Division. *Note the importance of the February 28, 2021 deadline. After that date, licensees will need to reapply for a new Mortgage license.***

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Broker Brush Up Series

I. Duties to Clients in Real Estate and Property Management	Q1 Newsletter
II. Transaction Files & Trust Accounts	Q2 Newsletter
III. Record Retention – 401K – Invest	Q3 Newsletter
IV. Supervision – Safe Harbor – Duties to Agents	Q4 Newsletter

Part IV of IV: Supervision – Safe Harbor – Duties to Agents

When I started selling real estate as a newbie sales agent, I was frustrated that I couldn't calculate my exact commission after closing a transaction. I asked my broker for accounting help, I asked my office manager for accounting help but, with each paycheck I found additional random charges assessed that I hadn't anticipated...only to find out years later that the office manager was taking a cut for herself out of sales agents' commission checks.

Did my branch broker fail to adequately supervise his employee? What were his responsibilities to me as his sales agent? Is he protected under the safe harbor rules when his employee skimmed agent commissions? Let's explore these questions by examining broker supervision, duties to agents, and safe harbor laws.

Broker Supervision [§61-2f-401\(13\)](#) & [R162-2f-401c\(1\)\(f\)](#) & [R162-2f-401j](#)

Principal and branch brokers will be held accountable for failing to exercise active and reasonable supervision over the activities of licensed and unlicensed staff. This includes granting approval of your licensees' assistants, transaction coordinators and team members. Be aware that you are responsible for ensuring that all unlicensed affiliates are not doing work that requires a license.

It is your responsibility to regularly reconcile all brokerage financial accounts and supervise the people that help you manage them. I don't know if my first broker "trusted" his office manager to run the financial accounts on his behalf without active supervision, but responsibly reconciling your financial accounts keeps small discrepancies from turning into trust account fraud.

Brokers track agent licenses to verify that they are active and in good standing. Starting January 2021, the Division investigators will notify brokers via email if we find your sales agents or employees are in violation of Utah law or administrative rules. Brokers that allow agents to make major mistakes can end up sharing in licensure, financial, and legal penalties.

Broker Duties to Agents

It goes without saying that my first broker had a duty to explain why my commission checks came up short, but with every transaction, he had a seemingly logical explanation of additional random brokerage charges. I finally gave up and decided that commission paychecks could not be precisely calculated. Funny thing is, when I changed brokerages, I was able to calculate my commissions to the penny.

Licensed agents are typically independent contractors and handle their own transactions but are dependent on their broker having a properly registered brokerage [§61-2f-206](#) & [R162-2f-205](#), an active broker's license [R162-2f-202b](#), and the ability to collect and pay commissions [R162-2f-401c\(1\)\(d\)](#).

Brokers should have written policies and procedures in place for their agents that explain legal compliance. It is also standard practice that a broker would offer industry updates and provide training resources for agents.

Brokers maintain and store transaction files on behalf of their agents [R162-2f-401k](#).

Brokers should confirm that transaction files are complete and agency agreements and purchase contracts are fully executed including initials, signatures, and dates by all parties involved.

Brokers should be easy to contact and readily available to answer questions and aid in resolving problems that arise during transactions.

Safe Harbor – [R162-2f-401c\(3\)](#)

Would my first boss have been protected with these safe harbor laws once it was uncovered that his employee misappropriated funds from the brokerage account? I'll probably never know, but as long as you do your broker due diligence, you are protected against violations by employees and sales agents if:

- Written policies preventing a violation are in place;
- Reasonable procedures are established that licensees receive adequate supervision;
- Upon learning of a violation, attempted to prevent or mitigate the damage;
- The Broker didn't participate in the violation;
- The Broker didn't ratify the violation; and,
- The Broker didn't avoid learning of the violation.

I don't have definitive answers to my questions about the skimming office manager in my early sales life, but I sure would like that case file to fall on my investigative desk in some alternate time continuum universe! Stay safe out there, practice active supervision, keep your agents licensed, educated and informed, and enjoy the feeling of peace within a safe broker harbor.

Laurel North – Investigator – Division of Real Estate

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Contract Appraisers Help Division with Investigations

In July 2020, the Division lost its only appraisal investigator, Craig Livingston, to retirement. Instead of filling Mr. Livingston's position by hiring another Division employee investigator, the Division opted to put a bid out for contract appraisers to complete reviews of appraisal complaints submitted to the Division. The Division is excited about this new process as licensed, working appraisers, **your peers**, will be reviewing appraisal complaints and offering their opinions.

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Division Staff Spotlight

Meet Jenny Knudsen! Jenny has been employed with the Division for the past 10 months. She was originally hired to assist with our new fingerprinting process, but is now working as a Real Estate Licensing Specialist and also helps to coordinate appraisal investigations. She really enjoys the variety of work that she has been able to do since beginning her employment here at the Division.

Prior to her employment at the Division, Jenny worked in the real estate industry for 15 years. She spent the majority of her time working with real estate investors and in property management. With her knowledge of the real estate industry, Jenny was able to easily transition to her new position.



Jenny has a passion for the outdoors, especially when it comes to hiking, backpacking, and wake surfing. In the summer months, she spends nearly every weekend at one of Utah's many lakes, wake surfing and boating with her friends, husband, five children and three grandsons. Jenny's love for exploring the world on foot has taken her to 15 different states as well as to Canada and Costa Rica. One day she

hopes to be able to say that she has hiked in all 50 states. In 2021, Jenny plans to complete a 200 mile hike through the Sierra Nevada Mountains!

We feel privileged that Jenny joined our team this past year and know she will continue to be an asset to the Division and to all of our licensees.

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4th Quarter Licensing & Disciplinary Actions

Please note that Utah law allows 30 days for appeal of an order. Some of the actions below might be subject to this appeal right or currently under appeal.

To view a copy of an order referenced in this article please visit the Utah Division of Real Estate Disciplinary Actions Search at: <https://realestate.utah.gov/licensing-and-disciplinary-actions/>

APPRAISAL/AMC

BODELL, J. MARTELL, II, certified residential appraiser, Draper, Utah. In a stipulated order dated November 25, 2020, Mr. Bodell admitted to having prepared a certified appraisal report for a property that as a certified residential appraiser he was not authorized to perform, in violation Utah law. Mr. Bodell agreed to pay a civil penalty of \$2,000. Docket number AP-2020-005 Case number AP-19-109772

CLASS VALUATION, LLC, Appraisal Management Company, and JONATHAN TALLINGER, controlling person for Class Valuation, Birmingham, Michigan, Respondents. In a stipulated order dated September 23, 2020, Respondents admitted that they did not pay an appraiser's fee within 45 days of completion of the appraisal assignment which is a violation of Utah Administrative Code. Respondents agreed to pay a civil penalty of \$1,000. Docket numbers AP-20-2020-003 and AP-2020-004, and Case number AP-18-104983

MORTGAGE

HANCOCK, LANCE LOUIS, mortgage loan originator, Eagle Mountain, Utah. In a stipulated order dated December 29, 2020, Mr. Hancock admitted that he falsified and forged a homeowner's insurance policy quote used in a residential mortgage transaction. One result of Mr. Hancock's actions resulted in both the borrower and the lender not being protected by homeowner's insurance for two days after closing the loan. Mr. Hancock also used "cut and paste" techniques to duplicate borrower's signature for several other documents used in processing the loan, without borrower's knowledge or consent. Mr. Hancock agreed that his mortgage loan originator license be immediately revoked, which action constitutes a lifetime ban on his ability to qualify for licensure as a mortgage loan originator. Case number MG-17-94151

SWINDER, JIMMY, unlicensed, Reseda, California. In a stipulated order dated November 4, 2020, Mr. Swinder admitted that although he was admitted to the California State Bar he has never been a member of the Utah State Bar nor has he ever been licensed in Utah to engage in the business of residential mortgage loans. Mr. Swinder admitted that he entered into an agreement with a Utah resident to pursue a home loan modification and charged the borrower a fee before obtaining the modification in violation of Utah law. Mr. Swinder never did obtain a loan modification for the borrower. Mr. Swinder agreed to pay a civil penalty of \$10,000. The civil penalty may be reduced to \$3,400 if Mr. Swinder pays the borrower restitution in the amount of \$3,600 within 90 days of the order. Case number MG-17-88594

WILSON, CHRISTOPHER HAROLD, mortgage loan originator, Fairfax, Virginia. In the Third Quarter Newsletter, it was announced that Mr. Wilson's application for temporary authority to originate loans in Utah was denied. It has since been determined that Mr. Wilson had indeed qualified for licensure. In a corrected order dated October 21, 2020, the order denying Mr. Wilson's temporary authority to originate loans was vacated and Mr. Wilson was granted a mortgage loan originator license. Case number MG-20-120976

REAL ESTATE

BARAGAN, ALAN H., sales agent, Springville, Utah. In an order dated October 27, 2020, Mr. Baragan's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-122472

BARNEY, BROOKE, sales agent, St. George, Utah. In an order dated November 10, 2020, Ms. Barney's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-122805

BRUGGEMAN, JERRY HAL, sales agent, Draper, Utah. In an order dated November 4, 2020, Mr. Bruggeman's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-122676

CHAPPLE, NICOLE, sales agent, Heber, Utah. In an order dated October 2, 2020, Ms. Chapple's license was reinstated and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-20-121976

CHENEY, ABIGALE LYNN, sales agent, Sunset, Utah. In an order dated September 21, 2020, Ms. Cheney's license was granted and placed on probation for one year due to a plea in abeyance agreement in a criminal matter. Case number RE-20-121585

CHRISTIAN, KENNETH, sales agent, Layton, Utah. In an order dated November 30, 2020, Mr. Christian's license was granted and immediately suspended for 30 days and will then be placed on probation for the remainder of the initial licensing period due to his failure to disclose his criminal history in his application for licensure. Case number RE-20-123125

CLASEN, MICHAEL LEE, sales agent, Salt Lake City, Utah. In a stipulated order dated October 21, 2020, Mr. Clasen admitted that he failed to disclose a plea in abeyance agreement and a criminal conviction in his application for licensure. Mr. Clasen agreed to pay a civil penalty of \$1,000. The penalty includes \$500 for each of the two questions in his application to which his answers misrepresented his criminal history. Case number RE-20-122035

CLAWSON, KILE RAY, sales agent, Salt Lake City, Utah. In an order dated November 10, 2020, Mr. Clawson's license was renewed and placed on probation for one year due to a plea in abeyance agreement in a criminal matter. Case number RE-20-122794

CLINE, EARL L., principal broker, Taylorsville, Utah. In an order dated October 2, 2020, Mr. Cline's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-20-121966

COOPER, SARAH CATHERINE, sales agent, South Jordan, Utah. In an order dated September 1, 2020, Ms. Cooper's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-121210

DANIELS, LACY RENEE, sales agent, South Ogden, Utah. In an order dated November 30, 2020, Ms. Daniels's license was granted and immediately suspended for 30 days and will then be placed on probation for the remainder of the initial licensing period due to her failure to disclose her criminal history in her application for licensure. Case number RE-20-123121

DAY, ALAYNA DALE, sales agent, Bountiful, Utah. In an order dated October 28, 2020, Ms. Day's license was reinstated and placed on probation for the renewal period due to a plea in abeyance agreement in a criminal matter during the past licensing period. Case number RE-20-122523

FRANCHISE REAL ESTATE, LLC, a licensed real estate company in Minnesota ("FRE"). In a stipulated order dated September 16, 2020, FRE admitted that it entered into an exclusive written representation agreement with a franchise tenant and represented that tenant in locating a commercial site for a franchise in Utah without FRE being licensed in Utah and without entering into a written co-broker agreement with a brokerage licensed in Utah. FRE admits that its actions violate Utah licensing law and administrative rules. FRE agreed to pay a civil penalty of \$14,993.44 and that it would not engage in activities requiring a Utah real estate license without being properly registered or licensed by the Division. Docket number RE-2020-008 and Case number RE-19-113915

GONGORA, EDUARDO, sales agent, Layton, Utah. In an order dated November 5, 2020, Mr. Gongora's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-122683

HOWES, JAYCE N., sales agent, Syracuse, Utah. In an order dated November 20, 2020, Mr. Howes's license was granted and placed on probation for the initial licensing period due to a plea in abeyance agreement in a criminal matter. Case number RE-20-122975

JEPPSEN, ZACHARY DAVIS, sales agent, Kaysville, Utah. In an order dated September 15, 2020, Mr. Jeppsen's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-121464

JONES, MELISSA A., sales agent, Herriman, Utah. In an order dated October 30, 2020, Ms. Jones's license was reinstated and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-20-122559

JONES, MICHAEL D., sales agent, Riverdale, Utah. In an order dated November 20, 2020, Mr. Jones's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-122976

KEITER, KELLY MARIE, sales agent, Lehi, Utah. In an order dated November 2, 2020, Ms. Keiter's license was renewed and placed on probation for the renewal period due to a plea in abeyance agreement in a criminal matter during the past licensing period. Case number RE-20-122587

KUNZ, CANDICE, sales agent, Pleasant View, Utah. In a stipulated order dated November 21, 2020, Ms. Kunz admitted that she knew of a boundary dispute on a property for which she was the listing agent but she did not produce any evidence of having disclosed the boundary dispute to the buyers' agent. Ms. Kunz's actions were a breach of her fiduciary duties to her client and were in violation of Utah administrative rules. Ms. Kunz agreed to pay a civil penalty of \$6,000 and to complete three hours of continuing education on the topic of Utah law in addition to the continuing education required for her next license renewal. Case number RE-17-95281

LARSON, KRISTOPHER, sales agent, St. George, Utah. On October 27, 2020, the Division issued a citation to Mr. Larson for publishing a number of video advertisements on youtube which did not include his brokerage information in violation of Utah Administrative rules. The citation assessed a fine in the amount of \$500. Citation #DREC-20-15 and case number RE-20-117987

LUNT, JACKSON, sales agent, Logan, Utah. In an order dated September 1, 2020, Mr. Lunt's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-121208

LUNT, LEXIE L., principal broker, South Ogden, Utah. In an order dated September 1, 2020, Ms. Lunt's license was reinstated and placed on probation due to a pending criminal matter. Case number RE-20-121213

MOA, BENJAMIN JOHN, sales agent, North Ogden, Utah. In an order dated September 1, 2020, Mr. Moa's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-121211

MORENO, GERARDO, sales agent, Vineyard, Utah. In an order dated November 3, 2020, Mr. Moreno's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-122611

MOWER, LAURIE F., sales agent, South Jordan, Utah. In an order dated October 2, 2020, Ms. Mower's license was renewed on probation due to criminal conduct during the past licensing period. In addition, Ms. Mower is required to notify the Division within ten business days of the disposition of a separate pending criminal matter. Case number RE-20-121967

MURIE, BRET R., dual broker and principal broker, Cedar City, Utah. In an order dated August 3, 2020, the Commission found that Mr. Murie violated Utah law by failing to maintain and safeguard trust account records either physically at the principal business location designated by the principal broker or electronically in a storage system in compliance with Utah law; failing to exercise reasonable supervision over licensed and unlicensed staff of the brokerage; failing to be personally responsible for deposits held in the trust account; failing to keep and make available for inspection by the Division a record of each transaction, failing to personally reconcile trust account records at least monthly; and breaching his fiduciary duty by delegating full responsibility for managing the company's trust account to his son, Landon Murie, a newly licensed sales agent. Mr. Landon Murie misused at least \$140,000 from the brokerage trust account and committed other violations of law while acting as a sales agent. Mitigating factors in the case include that Mr. Murie's son, Landon Murie, intentionally deceived his father, and that Mr. Bret Murie cooperated with both the Division's investigation of the complaints against his son and also with the criminal investigation of his son. Mr. Bret Murie was ordered to pay a civil penalty of \$10,000 with a credit in reduction of the amount of the penalty for any payments he makes in restitution to clients who lost money in the matter. In addition, Mr. Bret Murie's principal broker's license was revoked and he was granted a sales agent license, which license will be on probation for two years. Case number RE-18-99695 and docket number RE-2020-003

MURIE, LANDON BRET, sales agent, Orem, Utah. In an order dated July 27, 2020, the Commission found that Mr. Landon Murie violated numerous Utah laws including breach of a fiduciary duty to at least seven property owners; using client trust funds for his personal benefit; misusing at least \$140,000 from the brokerage trust account; falsifying trust account documents; failing to account for or remit money that belongs to another person; comingling trust money with his own money; being incompetent to act as a sales agent in such a manner as to safeguard the interests of the public; continuing a flagrant course of misrepresentation; and failing to respond to a request by the Division in an investigation within ten days. Mr. Landon Murie was ordered to pay a civil penalty of \$140,000 with a credit in reduction of the amount of the penalty for any payments he makes in restitution to clients harmed by his conduct as approved by the Division. Case numbers RE-218-99698, RE-18-99699, RE-18-99711, RE-18-99967, RE-18-99947, RE-18-99946, RE-18-99694, and RE-18-105276. Docket No. RE-2020-001

MURRAY, CASSANDRA MARIE, sales agent, Murray, Utah. In an order dated October 30, 2020, Ms. Murray's license was granted and immediately suspended for 30 days and will then be placed on probation for the remainder of the initial licensing period due to her failure to disclose a plea in abeyance agreement in a criminal matter. Case number RE-20-122555

MURRAY, JOCELYN LEE, sales agent, Provo, Utah. In an order dated September 15, 2020, Ms. Murray's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-121475

PATTEE, JANE H., sales agent, Park City, Utah. In an order dated November 24, 2020, Ms. Pattee's license was renewed and placed on probation due to a pending criminal matter. Case number RE-20-123036

REES, REBECCA ELISABETH, sales agent, Bluffdale, Utah. In an order dated November 3, 2020, Ms. Rees's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-20-122622

LENNON, ASHLEY M., sales agent, Sandy, Utah. In an order dated November 3, 2020, Ms. Lennon's license was renewed and placed on probation for the pendency of two criminal cases occurring during the past licensing period. Case number RE-20-122632

STELLING, JESSICA, sales agent, Herriman, Utah. In an order dated October 2, 2020, Ms. Stelling's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-20-121971

TABBAL, TORY, sales agent, South Jordan, Utah. In an order dated November 25, 2020, Mr. Tabbal's license was granted and placed on probation for the initial licensing period due to a plea in abeyance agreement in a criminal matter. Case number RE-20-123082

TAYLOR, JUSTIN C., sales agent, Logan, Utah. In an order dated November 3, 2020, Mr. Taylor's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-20-122612

TERRY, JENNIFER, sales agent, Sandy, Utah. On October 26, 2020, the Division issued a citation to Ms. Terry for failing to include her brokerage information in her social media advertisement. The citation assessed a fine in the amount of \$150. Citation #DREC-20-14 and case number RE-20-121451

WATHEN, ERIN, sales agent, Holladay, Utah. A stipulated order is dated September 16, 2020. Ms. Wathen represented a seller in a transaction in which the seller desired to rent back the property after closing. The buyer was not represented in the transaction. Negotiations for the rent-back option were unsuccessful. Ms. Wathen then entered into a memorandum of understanding with the buyer that would have allowed the seller to remain in the property for up to three days after closing with Ms. Wathen personally responsible for paying the rental cost for three days. She asked that the buyers not inform the seller of this agreement. The seller moved out of the property immediately upon closing and no rent-back option was necessary. Ms. Wathen admits that she failed to use an approved addendum form to modify the purchase contract and that she failed to disclose a material fact about the transaction to her client when she entered into an agreement directly with buyers without seller's knowledge or consent and by asking that buyers not inform seller about the agreement. Ms. Wathen's actions were in violation of Utah law. She agreed to pay a civil penalty of \$1,500 and to complete three hours of continuing education on the topic of Utah law in addition to the continuing education required for her next license renewal. Case number RE-19-112632

WILDE, SARAH, sales agent, Ogden, Utah. In an order dated October 22, 2020, Ms. Wilde's license was granted and placed on probation for the initial licensing period due a plea in abeyance agreement in a criminal matter. Case number RE-20-122365

WEBB, BRANDON JAMES, sales agent, Salt Lake City, Utah. In an order dated September 16, 2020, Mr. Webb's license was reinstated and placed on probation for one year due to criminal conduct during the past licensing period. Case number RE-20-121517

ZUNDEL, CHRISTIAN, sales agent, Salt Lake City, Utah. In an order dated September 22, 2020, Mr. Zundel's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-20-121629

TIMESHARE

There were no disciplinary or licensing actions in the timeshare industry in the fourth quarter.

Kagie's Korner

Electronic Transfers of Earnest Money

Whether it's Venmo, Apple Pay, or PayPal, brokers and agents should be aware of what is allowed and what the risks are when allowing clients to submit earnest money through money transfer applications.

The statute and rules are silent on how earnest money can be transferred from the buyer to the brokerage. The statute and rules only reference that funds should be submitted timely and all funds be accounted for: [§61-2f-401\(4\)](#), and [R162-2f-401a\(1\)\(f\)](#).

The biggest challenges with using third party applications to collect earnest money is verifying the funds have been seasoned to the lenders satisfaction and providing acceptable documentation.

If a broker is going to allow their agents to accept earnest money via third parties, the Division suggests the funds go directly to the brokerage's account rather than being transferred first to the agent and then the brokerage. If the funds remain in the agent's account for some reason, this could result in a violation of the statute and rules.

Brokers Best Practices:

- Educate your clients and agents on the risks of using third party applications
- Require that funds are directly submitted to the brokerage's account
- Document and account for all funds received

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Craig Morley Appointed to Appraisal Standards Board

The Division would like to congratulate Craig Morley for being selected as a member of the Appraisal Standards Board. Craig is a former Chair of the Utah Appraiser Board. We are thrilled at his addition to the Standards Board and look forward to see the changes to appraisal standards with his input.



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Instructor Development Workshop Recap

Cheryl Knowlton – Energized – Animated – Engaging

In late October, the Division held its 27th annual Instructor Development Workshop (IDW) with over 80 prelicense and continuing education instructor participants. This annual event was unique due to the existence of COVID-19 and associated concerns regarding social distancing requirements. Rather than meeting in person, the presentations were all given through Zoom. Different instructional methods were demonstrated via this relatively new presentation method.

Presentations by Division Staff members: Jonathan Stewart (Director of the Division of Real Estate), Mark Fagergren (Licensing & Education), and Kadee Wright (Chief Investigator) occurred during the morning session of the first day.

The remaining day and a half was filled with a highly effective and amazing presentation by Cheryl Knowlton. The many features of the virtual training platform were demonstrated. Virtual breakout groups and chat conversations resulted in outstanding interactivity between all participants in the two-day course. Features utilized in the instructor development course enlightened participants on how virtual training can in some ways be just as engaging and effective as live training courses.



The Division wishes to thank Ms. Knowlton for her outstanding workshop training and the attending instructors who benefitted from learning new techniques and skills to enhance their own prelicense and continuing education courses.

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