

Division of Real Estate NEWS

A publication for Utah's real estate,
appraisal, and mortgage professionals.

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SECOND QUARTER 2011

On-Line License Renewal Requires Completion of Continuing Education (CE) by the 15th of the Month

Three and one-half years ago, real estate licensees were introduced to the Division of Real Estate on-line real estate licensing and management system (RELMS). Real estate and appraiser licensees now perform all license renewals on-line (including all on-time renewals, late renewals, and reinstatement license renewals). Since January of this year, the Division has only allowed on-line license renewal applications for real estate and appraiser licensees.

As stated, appraisers are also required to use the on-line renewal system although their continuing education requirements are significantly different from the CE requirements of real estate licensees (28 approved CE hours including the 7-hour National USPAP Update Course).

For two years, real estate and appraiser licensees have been required to complete their continuing education (CE) by the 15th of the month in which their license renews. The real estate administrative rule explaining the requirement for the completion of CE by the 15th of the renewal month is available [online](#) and includes the following provisions:

- **Exception for Manual Processing of Paper Renewal Form.** The exception for licensees to submit a paper renewal is limited to those licensees who are **required** to submit a paper renewal form due to their “yes” response(s) to disclosure question(s) included in the on-line renewal module.

- **New Sales Agent Course.** New licensees (those who are in their first renewal cycle) shall complete the 12-hour new sales agent course along with six additional non-duplicative CE hours.
- **CE Must be Non-Duplicative as Well as Be Completed by the 15th of Renewal Month.** Licensees (other than new licensees) shall submit their 18 non-duplicative CE hours (including at least nine non-duplicative hours of core courses) by the 15th of the month in which the license expires.

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From the Director's Desk



Deanna Sabey

Do you remember when you were a kid, or perhaps a teenager? You tried hard to follow the rules and stay out of trouble. Well, maybe some of you tried a little harder than others. There were always kids who regularly broke the rules, but somehow never got in trouble. For those of you trying to stick by the rules, it was frustrating to watch those kids “get away with it.” Did you report those kids who broke rules or ignore them?

The stakes are much higher now. Many of you recognize that the principle, “don’t be a tattletale” does not apply to professional life. Consumers and your profession are harmed when you ignore others who are violating the law. You have a professional duty to submit a complaint to the Division about any person you believe is violating Division statutes and rules. Thank you to those of you who care about your profession and the people you serve enough to step up and report the bad actors.

The Division has a number of tools it can use after your complaint is submitted in order to deal with substantiated allegations. Often, respondents choose to stipulate with the Division to resolve enforcement issues. Respondents may, instead, choose to appear before the Real Estate Commission, Mortgage Commission or Appraiser Board. At that point, the Division makes recommendations to those decision-makers for actions on the license, fine amounts and required education.

Although the Division cannot take criminal action against bad actors, it frequently refers matters to a criminal prosecutor. It may take a while for the prosecutor to work the case through to its end, but the Division is very pleased to see justice served at the end of the day.

The Division referred Steve Ogden to federal prosecutors years ago. Mr. Ogden was indicted by a federal

grand jury on 12 fraud counts and his sentence is anticipated shortly. The referral resulted after a broker tipped off the Division about a property flipping scam. A few years ago, the Division gave information to federal prosecutors on the Provo Riverbottoms debacle. Ron Clark was subsequently sentenced in 2009 to 41 months in federal prison because of his involvement in that property flipping scheme. Brad Kitchen was sentenced to 51 months in federal prison, and Steve Cloward received 33 months, both for their involvement with Ron Clark. Also in 2009, a referral from the Division resulted in charges against Tyler Cassity and Olivia Cassity for 18 felony counts involving mortgage fraud and the falsification of appraisals. As the result of another matter the Division referred to prosecutors, Chris Hales recently pled guilty to falsifying documents to drive up home prices as part of a mortgage fraud scheme. Other bad actors on a substantial list have been forced to deal with criminal prosecution because of referrals made by the Division.

Earlier this year, the Division referred six matters to prosecutors including a case involving the falsification of documents and a case involving property flipping. Just a couple of weeks ago, our investigators met with the Attorney General’s office to refer a case involving the conversion of trust account funds. And there are more referrals to come, one involving a loan modification scam.

The Division is working hard to shut down bad actors, one way or another. While we experience set backs in cases for a variety of reasons, we will not relent in our commitment to get the crooks out of your business.



Complaints Regarding AMCs

The DRE regularly hears from appraisers who are concerned about the way some AMCs are operating. In response, we have promulgated numerous rules to address the general concerns that have been shared with us. What follows is a discussion of the most frequent complaints, as well as information about the extent to which the DRE can assist an appraiser in addressing them.

1. *“Even though I am on the panel, I’m not getting any assignments. The AMC is not assigning jobs fairly.”* There is no requirement that an AMC use every appraiser on its panel, just as there was no requirement in the pre-AMC days for a lender or a mortgage company to assign jobs “fairly.” The DRE has carefully studied this issue and has determined that it cannot regulate the business practices of a private entity to the point of overseeing its contracts. An AMC may award assignments as it sees fit, as long as it does not collude with an appraiser to manipulate the data to arrive at a predetermined value or otherwise commit a violation of applicable laws and standards in the process of completing a report.

2. *“The AMC assigns each job to the first appraiser who responds to an e-mail broadcast. It does not evaluate which appraiser is most qualified for the geographical area, the type of assignment, or the scope of work.”* The AMC statute mandates that an AMC use only licensed or certified appraisers (see [Utah Code § 61-2e-301](#)). Under USPAP and state law, a licensed or certified appraiser is presumed qualified to perform any appraisal that is within his or her scope of authority and may take steps to develop competency, as needed, for any such assignment. While some appraisers will be more qualified than others in any given situation, there is no way to mandate, for example, that an AMC use “the best” appraiser for each job. Such a regulation would simply be unenforceable. If an AMC chooses an appraiser who fails to demonstrate competency—who produces a report that is misleading or contains USPAP violations—the DRE would initiate an enforcement action against the appraiser.

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2011 DRE CARAVAN

This year, the CARAVAN traveled to seven different locations throughout the state. These meetings occurred from late April to mid-May and allowed Division personnel to interact with licensees throughout the state, including some of the more remote locations.

Director Sabey discussed, among other things, House Bill 91, which became effective on 5/10/11, and other recent legislative and rule changes affecting the appraisal, real estate, and mortgage industries. She also presented information regarding the far-reaching ramifications of the recently enacted Dodd Frank Act and the Federal Trade Commission MARS Rule that affect each of the Division's regulated industries.

Director Sabey concluded her remarks discussing the challenges facing the industry and the Division due to current market conditions, federal legislation and keeping up with ever changing technology.

Dee Johnson, the Division Enforcement Director, recapped his past seven CARAVAN presentations, which included numerous types of mortgage or real estate fraud and their variations.

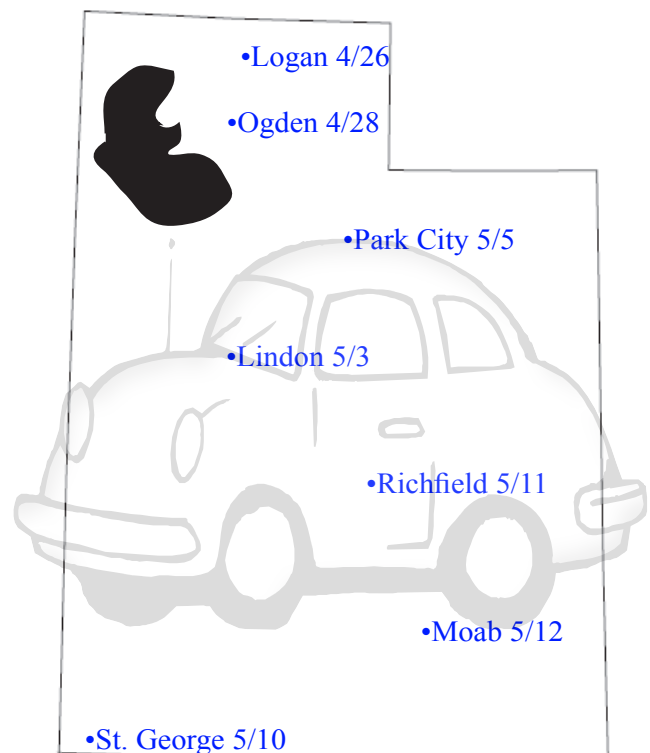
Mr. Johnson then shared information regarding foreclosure rescue plans, some of which are completely legitimate while others are fraudulent in nature and are nothing more than scams. He discussed how a person can spot and help to stop or prevent foreclosure rescue fraud.

The Director of Licensing and Education, Mark Fagergren, discussed a number of licensing and education issues in his presentation, including the CE banking process and the requirement to complete CE by the 15th of the month in which a licensee renews his or her license. Mr. Fagergren also discussed increases in licensing requirements for new real estate and appraiser licensees and recent website and RELMS system enhancements.

In his presentation, Mr. Fagergren explained trainee registration deadlines and segmented application results to attending appraisers. The procedure of how to remain on the National Appraisal Registry was discussed.

Mr. Fagergren covered mortgage licensing issues and presented licensing statistics. In addition, he discussed credit reporting requirements for mortgage originators and noted that, currently, there is no requirement for Utah mortgage licensees to submit call reports.

The Division received meaningful feedback, suggestions and comments from licensees regarding rules and policies. The Division appreciates those who took their time to come and participate in this annual event.



TIMESHARE REALES A FERTILE BED FOR FRAUD

Like the rest of the real estate industry, timeshare sales have been hit hard and, unfortunately, timeshare resales have become rich ground for fraudsters. Timeshare owners who are desperate to dump their timeshares are prime targets for scammers who offer empty promises. Typically, the scammers offer victims a full return on their initial investment along with a tidy profit.

The story is similar from state to state. A representative from a timeshare marketing company delivers a fast pitch and quick sale guarantee to the owner of a timeshare. The company needs up-front fees to cover sales-related costs for processing fees and a title search. As soon as the owner sends the money, the representative can no longer be reached.

The Federal Trade Commission has been aggressively pursuing these fraudsters. As an example, the FTC recently sought a restraining order in a Florida federal court to shut down a company that allegedly tricked thousands of consumers into paying sizeable up-front fees with false promises that they either had buyers ready and willing, or that the company would have no problem finding buyers quickly.

As a licensee, you may be asked for advice or help from a consumer who is looking to contact a timeshare resales company. The FTC has posted the following caveats for consumers looking to sell their timeshares:

- Don't agree to anything on the phone or online until you've had a chance to check out the reseller. Contact the Better Business Bureau, state Attorney General, and local consumer protection agencies in the state where the reseller is located. Ask if any complaints are on file.
- Ask the salesperson for all information in writing.

- Ask if the reseller's agents are licensed to sell timeshares where your timeshare is located. If so, verify it with the state agency over timeshare sales and make sure there are no complaints.
- Ask how the reseller will advertise and promote the timeshare unit. Will you get progress reports? How often?
- Ask about fees and timing. It is preferable to do business with a reseller that takes its fee after the timeshare is sold. If you must pay a fee in advance, ask about refunds. Get refund policies and promises in writing.
- Don't assume you'll recoup your purchase price for your timeshare, especially if you've owned it for less than five years and the location is less than well-known.
- If you want an idea of the value of a timeshare that you're interested in buying or selling, consider using a timeshare appraisal service. The appraiser should be licensed in the state where the service is located. Check with the state to see if the license is current.

The entire FTC Consumer Alert can be found at <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt185.shtm>.

Currently, the Utah Division of Consumer Protection regulates re-seller activities under the Consumer Sales Practices Act. See <http://www.consumerprotection.utah.gov/>. Resale transactions are subject to a three-day rescission right. The Division of Consumer Protection has taken actions against re-sellers in the past and required restitution to victims.



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On-Line License Renewal Requires Completion of Continuing Education (CE) by the 15th of the Month

R162-2f-204. License Renewal.

- (1) Renewal period and deadlines.
 - (a) A license issued under these rules is valid for a period of two years from the date of licensure.
 - (b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).
 - (c) In order to renew on time without incurring a late fee:
 - (i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and
 - (ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:
 - (A) by the license expiration date, if that date falls on a day when the division is open for business; or
 - (B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.
- (b) Continuing education.
 - (i) To renew at the end of the first renewal cycle, an individual shall complete:
 - (A) the 12-hour news sales agent course certified by the division; and
 - (B) an additional six non-duplicative hours of continuing education:
 - (I) certified by the division as either core or elective; or
 - (II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).
 - (ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:
 - (A) complete 18 non-duplicative hours of continuing education:
 - (I) certified by the division;
 - (II) including at least nine non-duplicative hours of core curriculum;

Licensees are required to complete CE by the 15th day of the month in which the license expires in order to allow adequate time for CE providers to upload all CE credits. CE providers are required to upload course completion information within 10 days after the end of a course offering.

Many licensees do not realize that there is typically a 3 – 5 business day lag time AFTER a CE course provider electronically banks attending licensees' credits and when those credits are received into the Division's RELMS system.

Technology enables instantaneous or "live" CE banking which would avoid any lag time between when a CE provider banks CE credits and when those credits are placed into the Division's licensing records. Why then does the Division not "dump" the current system (with the inherent built-in time delays), when this inconvenience could be eliminated?

COST. The Division receives the existing banking service at ZERO additional cost to licensees (beyond the existing examination fees that are currently charged new applicants). Typically, instantaneous banking service providers charge \$1.50 per CE credit hour per licensee.

For example, a real estate agent needs to complete 18 hours in order to renew their license. Instantaneous banking would allow a renewing licensee to finish taking CE credits at 11:45 p.m. on July 31st and STILL have time to complete the on-line renewal by the end of the month! However, to enable this “live” banking feature, all 14,243 active real estate licensees would need to pay $\$1.50 \times 18 \text{ CE hours} = \27.00 every renewal cycle for this feature (appraisers would each need to pay $\$1.50 \times 28 = \42.00).

When this issue was presented to and discussed with the attendees of the 2011 Division CARAVAN, less than ½ of 1% (0.003) of attendees indicated that they would prefer to eliminate our existing (time lag included) FREE CE banking service in favor of the instantaneous/”live” banking service that would charge the fees described above.

With proper planning, all licensees can complete their CE in a timely manner and avoid having to pay a late fee for yet unbanked CE courses. Remember, the Division licensing system will prevent licensees from completing their two-year license renewal if they do not have the appropriate amount of CE credits in their accounts. Completing CE in the last few days of the renewal month does not allow sufficient time for providers and CE banking “lag time” to reflect those recently completed courses. Until CE credits are accessible in the licensee’s RELMS account, the licensee cannot renew.

Most licensees complete their CE and renew their licenses without any problem. Those who procrastinate and complete their final CE credits in the last two weeks of the month run the risk that their recently completed credits will not be deposited into their RELMS account in time for them to renew without incurring a late fee. Please plan ahead to avoid any unnecessary frustrations.



Staff Spotlight



Travis Cardwell
Mortgage Investigator

This past April, Travis Cardwell started working for the Division. He was employed as a mortgage loan officer for the past six years prior to his arrival at the Division. Travis has experience and knowledge of VA, FHA, Conventional, and USDA loan products including Utah Housing. He is also licensed in 10 other states. Before entering the mortgage industry he worked for Delta Air Lines for 13 years. His family is the most important part of his life. Travis has been married to LeAnne for 18 years and they have 4 kids, Josh, Carly, Jared, and Jason. They love doing things as a family and enjoy camping, playing basketball, and just hanging out. Travis has another passion in his life...his yard. He loves to do yard work and has one of the nicest yards in the neighborhood.

Travis says, he is excited to be working for the Division as an investigator because he feels he can have a direct positive impact on the mortgage industry.

"Our industry has many excellent loan officers that work hard to provide the best product and services for their borrowers. However, there are a few out there that don't like to follow the rules which makes it harder for the honest loan officer to gain the trust of their clients. My goal as a mortgage investigator is to help put an end to mortgage fraud. "

We are pleased to have Travis Cardwell working for the Division. His knowledge and enthusiasm for the mortgage profession will contribute to his success and to assisting and serving members of the mortgage community.



Second Quarter 2011

Licensing Actions & Disciplinary Sanctions



Please note that there are 30 days after the order date for a licensee or an applicant to file a request for agency review of the order, and that there are 30 days after the issuance of an order on review for a licensee or an applicant to file a petition for judicial review. Some of the orders listed may be

within those appeal periods.

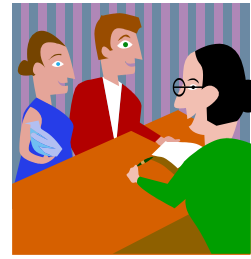
APPRAISAL

PAINTER, JEFFERY M., State-certified Residential Appraiser license, Syracuse, UT. In an April 27, 2011 stipulation and order, Mr. Painter agreed to pay a civil penalty of \$2,000 and to complete the 15-hour USPAP standards class, including successful completion of the examination. In his appraisal of a property located in North Salt Lake, Mr. Painter failed to state, analyze, and evaluate a recent previous sale of the subject property, thus violating USPAP Standards Rules 1-1(a), 1-1(b), 1-5(b), and 2-1(b). Case number AP-10-49065.

PETERSON, MARK D., State-certified Residential Appraiser license, Orem, UT. In a May 5, 2011 order following a disciplinary hearing before the Board, civil penalty of \$21,000 assessed. In addition, the Board revoked Mr. Peterson's credential as a state-certified residential appraiser, and issued him a credential as a state-licensed appraiser. In his appraisals of four different properties, Mr. Peterson repeatedly failed to report and analyze relevant sales and listings, made statements

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LEGAL CORNER



Your business name is likely one of the most important assets you own, especially if you have spent years developing your business. One of the best things you can do to protect your name is to have it registered with the United States Patent and Trademark Office (<http://www.uspto.gov/trademarks/basics/index.jsp>) and the Utah Division of Corporations (<https://secure.utah.gov/trademark/index.html>). Neither of these government agencies will pursue infringing users on your behalf, but registering your business name with them affords you special legal protections and may entitle you to receive significant damages if you are able to prove infringement in a court.

If your name is not registered, you still may be able to prevent a competitor from using your business name through a legal action and be awarded damages in court under the common law. You must show that the trade names are sufficiently similar to produce confusion among the customers of the businesses using the trade names. Other legal factors may be required depending on the facts surrounding the name usage.

Recently the Utah Division of Real Estate changed its rules to help consumers avoid confusion in doing business with mortgage entities having confusingly similar names. The Division will not issue a license to a mortgage entity proposing to use a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading (Utah Administrative Code §R162-2-c-201(4)(b)). A similar rule is proposed for real estate.

Disclaimer: the Utah Division of Real Estate has provided articles in this electronic newsletter ("e-newsletter") for general informational purposes only. It is not intended as professional advice or counsel and should not be used as such. You should contact your attorney to obtain advice with respect to any particular issue or problem.

Kagie's Korner

When do I need to notify the Division of a civil action, criminal case or bankruptcy?



Many times a month, Division staff members receive calls from licensees inquiring about whether matters need to be reported to the Division. For all three industries regulated by the Division, a licensee is required to notify the Division of the following items by sending the Division a signed statement within 10 business days of:

- 1) a conviction of a felony, class A misdemeanor, or class B misdemeanor
- 2) the entry of a plea in abeyance to a felony, class A misdemeanor, or class B misdemeanor; or
- 3) the potential resolution of a felony, class A misdemeanor, or class B misdemeanor by:
 - (i) a diversion agreement; or
 - (ii) another agreement under which a criminal charge is held in suspense for a period of time;
- 4) filing a personal or brokerage/business bankruptcy;
- 5) the suspension, revocation, surrender, cancellation, or denial of a license or registration of the licensee that is necessary to engage in an occupation or profession, regardless of whether the license or registration is issued by this state or another jurisdiction; or
- 6) the entry of a cease and desist order or a temporary or permanent injunction:
 - (i) against the licensee by a court or administrative agency; and
 - (ii) on the basis of:
 - (A) conduct or a practice involving the business of real estate, residential mortgage loans; or
 - (B) conduct involving fraud, misrepresentation, or deceit.

Here are some examples of situations that must be reported. Mr. New-cycle is out riding his motorcycle for the first time on a beautiful spring morning. A police officer pulls him over for having expired plates. During the traffic stop, the officer finds that the driver has no insurance on the bike. The officer then issues a ticket for expired plates and no proof of insurance. The court finds Mr. New-cycle guilty of a class B misdemeanor and requires him to get insurance and to pay a fine to the court.

Even a relatively simple driving violation can turn into a class A or B misdemeanor. In that circumstance, a driving violation must be reported to the Division within the ten business day reporting requirement as stated above.

Mrs. Upset, a licensee, is having a fight with her significant other and “throws things around the apartment.” She then leaves to cool off. The police are called by a concerned neighbor, and officers arrive to investigate the call. Mrs. Upset returns home and is arrested for domestic violence in the presence of a child. The court allows her to enter into a plea in abeyance to a class A misdemeanor and her case will be dismissed at a later date provided she adheres to the terms of the plea agreement.

Although this is a plea agreement resulting from a family dispute, it needs to be reported to the Division within the ten-day reporting requirement.

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Mortgage Continuing Education (CE) Information & Requirements



With only four months to go until the 2011 mortgage license renewal period opens, the Division believes it is important to provide some important information and reminders regarding SAFE Act and NMLS requirements for continuing education (CE).

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) requires that state licensed mortgage loan originators (MLOs) complete annual continuing education.

For SAFE Act and NMLS purposes, Utah mortgage licensees holding either principal lending manager (PLM), branch lending manager (BLM) or associate lending manager (ALM) licenses are treated as having mortgage loan originator (MLO) licenses. The CE that all Utah mortgage licensees are required to complete is:

3-hours of federal law and regulations;

2-hours of ethics that shall include instruction on fraud, consumer protection, and fair lending issues;

2-hours of training related to lending standards for the nontraditional mortgage product; and

1-hour of undefined instruction on mortgage origination.

Licensees can complete their CE by taking individual NMLS courses in the hour increments prescribed above, or they can take course packages that include all or part of the required renewal CE. An NMLS “comprehensive CE” package course includes all 8-hours of required NMLS CE.

To review NMLS approved CE courses offerings and packages go to: <http://mortgage.nationwidelicensingsystem.org/profreq/education/Pages/default.aspx>.

The SAFE Act states that MLOs may receive credit for CE in the year in which the course was taken, and may not take the same approved course in the same or successive year to meet the annual requirements for CE.

Additional note: Utah mortgage licensees who reinstated their mortgage licenses between January 1, 2011 and February 28, 2011 and who completed “late” or “reinstatement” CE in order to reinstate their 2011 licenses will be required to complete an additional cycle of 8-hours of NMLS CE during the 2011 calendar year in order to obtain a renewed license to practice in 2012. The reason these individuals need to complete two sets of CE in 2011 is because the “late” or “reinstatement” CE they took between January 1, 2011 and February 28, 2011 was retroactively applied to their NMLS record for the previous year (2010).

MLOs are not required to complete CE in the same year in which they complete the 20-hour NMLS PE. However, the NMLS requires that CE be completed in the calendar year immediately following the year in which an MLO completes the NMLS 20-hour pre-licensure education (PE), regardless of the date on which an initial license is granted. Therefore, an MLO who completed the 20-hour NMLS PE in 2010 is required to complete CE by the end of the renewal period in 2011 even if the MLO did not receive the initial license until this year.

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Kagie's Korner

Case 1: Individual completed PE in March 2011 and was granted his first license in April 2011.

Q: Is CE required in 2011?

A: No. MLOs are not required to complete CE in the same year PE is completed.

Q: When is CE required?

A: The MLO is expected to complete CE in calendar year 2012 to maintain licensure for 2013.

Case 2: Individual completed PE in November 2010 and was granted his first license in February 2011.

Q: Is CE required in 2011?

A: Yes. The NMLS requires CE in the year immediately following the PE compliance date.

Initially the Division believed that obtaining a new lending manager (PLM, BLM, or ALM) license would exempt a person from the NMLS CE requirement in the year that the initial lending manager license was issued. The Division has recently learned that since the NMLS perceives the PLM, BLM and ALM licenses to be variations of MLO licenses, the NMLS will not allow any CE completion "gap." In other words, the NMLS does not view a licensee who elects to upgrade a Utah MLO license to a PLM as having obtained a new license. Therefore the NMLS 8-hour CE requirement described earlier in this article is required in the initial licensing year for new PLM, BLM, and ALM mortgage licensees.

Mr. Happy-hour, after a hard week, decides to stop at the local bar for a few beers. When he departs to go home, he is arrested for driving under the influence. Because this has happened to Mr. Happy-hour before, the court finds him guilty on a felony DUI charge, but agrees to reduce the charge to a class A misdemeanor after he completes a DUI course and has no further violations for one year.

Entering a plea in abeyance or a diversion agreement to a felony, class A, or class B misdemeanor with the court requires the licensee to report to the Division within the ten business day reporting requirement, even if the incident is likely to be dismissed after some period of time or if the licensee anticipates having the charge reduced at some later date, such that the lesser charge would not require reporting to the Division.

Any time a licensee has been charged and the court has taken action, the licensee needs to be sure how the charge is classified and how the charge might impact a license.

Licensees are encouraged to contact the court to assist them in identifying the classification of the charge. Although not required, contacting an attorney for advice regarding your Division reporting requirements would be strongly recommended if you are in doubt regarding whether you should report some type of court action. The violation of failing to report a court outcome to the Division can have a significant impact upon a licensee. Fines, license probation, suspension or revocation ultimately could be imposed upon a non-reporting licensee.

In addition, the filing of a personal bankruptcy or an industry business bankruptcy triggers the ten business day reporting requirement, as does the entry of a cease and desist order with regard to mortgage, real estate, or appraisal activities.

A matter that requires reporting is deemed to be properly reported to the Division if the licensee submits a signed statement (along with the appropriate court documentation) within 10 business days of an event listed at the beginning of this article



Fiduciary Duties of Real Estate Licensees

Real Estate licensees have many professional responsibilities and duties that are owed to various individuals and entities. These duties are very specific when it comes to the licensee's client and/or customer. The Division of Real Estate's administrative rules specifically list the duties of real estate licensees. These particular duties, called fiduciary duties, are listed in R162-2f-401a(1). See <http://www.rules.utah.gov/publicat/code/r162/r162-02f.htm#T18>

Fiduciary duties are higher standards that are imposed upon licensees due to the special relationship they have with their clients/customers. These are in addition to the duties owed to all other participants in the licensee's transactions.

Generally, a licensee enters into a written agreement with the client/customer, such as a listing agreement or buyer representation agreement. An agency agreement should be executed at the same time. These written agreements normally specify what services will be provided and what will be the compensation for those services. There may be many duties specified in the written agreements, which become contracted responsibilities. Fiduciary duties are in addition to those that have been contracted for between the parties. It is possible, however, for a licensee to enter into an agency relationship without a written agreement. There are times when a licensee does not intend to become the agent of a principal but nevertheless becomes an agent through the course of his or her conduct.

Regardless of the manner in which the agency relationship is created, it is important for licensees to realize what their responsibilities and duties entail. Most fiduciary duties can be described in one of the following headings.

Loyalty: Loyalty is a basic building block of any agency relationship. The licensee has a fundamental responsibility to act in the best interest of the principal

at all times, even to the exclusion of all other interests, including the interests of the licensee. If the interests of the principal conflict with the interests of the licensee, the licensee must disregard his or her own interests or let the principal know that the licensee can not represent that principal.

Obedience: A licensee has a duty to obey and perform all instructions of the principal, and to perform these instructions promptly and efficiently. The exception is if the licensee is asked to do something that is either illegal or a violation of the statute or rules that the licensee is bound to uphold or protect. The licensee must use his or her best judgment when weighing the instructions from a principal.



Confidentiality: Confidentiality is a factor which creates a unique relationship between a licensee and the principal. The principal has the right to know that a licensee will not divulge the confidences and secrets that have been expressed by the client. To do so may well put the principal at a disadvantage in the bargaining and resolution of any matters that occur prior to closing. The duty of confidentiality continues even after the transaction is closed.

Full Disclosure: The licensee shall disclose to the principal any and all information that the licensee becomes aware of that is a material fact. A material fact is knowledge that, if disclosed, would cause a principal to change or reconsider the purchase/sale of the property. The principal might not be able to change the terms of sale that have been previously agreed to, but definitely has the right to know all pertinent facts or information when the licensee is made aware of them at any time during the sale or agency relationship.

Reasonable Care and Diligence: Real estate licensees are considered to be experts in the field of buying and selling real estate. That expertise places the licensee in a position of having special knowledge about the properties and the real estate transaction. The public places trust in the licensee to use that expertise to the advantage of the

Fiduciary Duties of Real Estate Licensees continued from previous page

principal when buying and selling real estate, and the licensee must uphold that trust. The licensee is expected to use his or her professional expertise in a reasonable manner. However, no licensee is expected to perform tasks outside the licensee's field of expertise, such as giving legal advice, providing tax or accounting information, or even advising as to construction matters.

Holding safe and accounting for all monies entrusted to the licensee: The licensee has a vital trust from the principal to safeguard and protect any monies that belong to another party in the transaction. This is one of the most fundamental duties of all licensees. Monies are to be accounted for at all times in a real estate transaction. The licensee must make sure that the monies of another are never commingled or converted for another use.

The State of Utah has imposed an additional affirmative duty on real estate licensees. It can be found at R162-2f-401a(1)(g), and it requires a licensee to uphold any additional duties created by the agency agreement. It is certainly possible that a licensee may contract with a principal to perform additional duties. These additional duties then become incorporated into the administrative rules governing real estate professionals, and a failure to perform such a duty can become the basis for discipline.

Every real estate licensee should take the time read and thoroughly understand the fiduciary responsibilities in regard to each transaction with a principal.



Real Estate Teams and/or Personal Assistants Requirements and Supervision

From time to time, the Division receives questions relating to real estate teams and personal assistants. This article discusses some of the issues Division staff regularly addresses with licensees regarding these topics.

According to R162-2f-401c (i), real estate brokers are responsible to exercise active supervision over the conduct of **all licensees and unlicensed staff** employed by or affiliated with that principal broker. The broker has direct, active supervisory responsibility for all licensees (including all licensees who are members of a team). Often, we learn of instances where a licensed team member or unlicensed personal assistant reports exclusively to, and is only supervised by, a "team leader". This type of "supervision" over licensees does not comply with the rule referenced above.

Despite the fact that a broker may choose to designate other licensees within an office as trainers, mentors, or team leaders for other licensees, the direct, active supervisory responsibility for all licensees (and unlicensed staff) is ultimately the responsibility of the broker (or a designated branch broker).

If a team member is concerned that the leader may be advocating or advising a questionable policy or practice, the team member would be wise to resolve the concern directly with the principal broker (and/or where applicable, the branch broker).

A principal broker may grant permission for a licensee to employ and pay **unlicensed** personal assistants (whether the licensee is a member of a team or not). Both the licensee who hires a personal assistant AND the principal broker have the responsibility to supervise the unlicensed assistant and, among other things, ensure that the unlicensed assistant is only performing functions that do not require a real estate license. The administrative rules regarding the allowable duties of personal assistants can be found at R162-2f-401g.

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Complaints Regarding AMCs

3. *“The AMC is pushing appraisers into lowering their bids. The result is that the appraiser who finally takes the job has to take shortcuts in order to make a profit, and the appraisal reports he or she generates are not worth the paper they are written on.”* The DRE cannot prohibit an AMC from seeking or accepting the lowest bid. Nor can the DRE prohibit an appraiser from lowballing a bid in order to get a job. Nor can the DRE engage in price fixing in order to mandate specific fees for specific assignments. However, the AMC statute does provide that an AMC may not influence the development of an appraisal by “compensating an appraiser in a manner that the [AMC] should reasonably have known would result in the appraiser not conducting a real estate appraisal activity in a manner consistent with applicable appraisal standards” (see [Utah Code § 61-2e-307\(2\)\(k\)](#)). If the DRE were presented with evidence that a particular AMC was paying unreasonably low fees, compounded by evidence that the appraiser(s) who accepted those fees were generating reports that lacked analysis, missed relevant data, and contained other USPAP violations, we would likely be able to take an action against both the AMC and the appraiser(s). Note that an appraiser in these circumstances would **not** be excused for creating a misleading report.
4. *“The AMC is charging me an application fee to be on its panel.”* This situation involves a contractual agreement between an appraiser and an AMC and, as such, is beyond regulation by the DRE. In essence, the AMC offers something of value, but asks something of value in return.
5. *“The AMC is charging me a delivery fee, an administration fee, a processing fee, etc. And this is after it is already taking at least a third of what is being charged to the client for the appraisal itself.”* Rules went into effect on June 22, 2011 (see Utah Administrative Code § R162-2e-304(1)(a)(ii) and § R162-2e-401(1)(f)) to require that an AMC disclose any fees that will be charged to the appraiser in conjunction with the assignment. An AMC may not charge a fee that is undisclosed at the time the assignment is offered. Nor may it charge a fee for a service unless the service is actually performed. Nor may it mark up a fee above the actual cost of a service provided by a third party. Mandating disclosure is as far as regulation can go. Beyond that, fees are a matter of contract negotiations.
6. *“The AMC will not give me information about how the appraisal fee is being split so that I can include it in the body of my report.”* According to [Utah Administrative Code § R162-2e-304\(3\)-\(4\)](#), an AMC **must** provide this information to the appraiser and allow for its inclusion in the final report. We have heard that some AMCs are arguing that they do not have to comply with the administrative rule because the statute requires fee disclosure only to the client (see [Utah Code § 61-2e-304\(1\)](#)). This argument has no substance. The rule does not conflict with the statute; in order words, it is possible for an AMC to comply with **both** disclosure requirements. Therefore, it must do so, and the DRE will take action against any AMC that violates the administrative rules governing disclosure.
7. *“The AMC has forbidden me to communicate with the lender (or another person involved in the transaction).”* [Utah Administrative Code § R162-2e-401\(1\)\(b\)](#) addresses this issue. An AMC may not prohibit an appraiser from communicating with a specific person or entity **unless** the client has restricted the communication as part of the assignment. If an appraiser receives such a prohibition from an AMC, the appraiser would be fully justified in asking the AMC to show where the communication has been prohibited by the client. If the AMC refuses to do so or cancels the assignment, the appraiser should submit a complaint to the DRE.
8. *“I think I’ve been taken off an AMC’s panel, but I don’t know for sure, and I can’t get anybody from the AMC to give me a straight answer.”* According to [Utah Code § 61-2e-306](#), an AMC may not remove an appraiser from a panel without giving the appraiser written notice of the reason for the removal, including an explanation of any alleged illegal conduct and/or USPAP violations. In addition, the AMC must give the appraiser an opportunity to

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Real Estate Teams and/or Personal Assistants Requirements and Supervision

Compensation to an unlicensed assistant must be paid at a predetermined rate that: 1) is not contingent upon the occurrence of real estate transactions; 2) is not determined through commission sharing; and 3) does not involve fee splitting. No compensation for ANY real estate-related activity may be received by any licensee from ANY source other than the principal broker. This long-standing rule applies to individuals who are licensed and functioning as either personal assistants or team members. Examples of real estate activities requiring payment to the licensee's principal broker are:

- referral fees
- builders' finders fees
- property management fees
- broker price opinions
- listing or sales bonus compensation (including trips, etc.)

Team members and their principal broker should also pay close attention to the Division's advertising rules. A team advertising rule was modified in December of 2010. The modified rule requires advertising materials to clearly and conspicuously identify in lettering that is at least one-half the size of the **LARGEST lettering used in the advertisement**, the name of the real estate brokerage with which the property being advertised is listed.

For example:

HUGE AFFORDABLE HOMES FOR SALE (1")

Marketed by The Dream Team

Cloud Nine Realty (1/2")

(The name of the real estate brokerage must be at least one-half the size of the largest lettering used in the advertisement. In this case the largest print in the ad is 1", therefore the brokerage name must be at least 1/2")

In recent years, teams and personal assistants have played a significant role in the evolution of the real estate industry. Principal brokers and their licensees would be wise to know the requirements and responsibilities involved with running teams and compensating team members and personal assistants. U.S. President Harry S. Truman had a saying on his desk, "the buck stops here." The same is true for principal brokers.



RULE DEVELOPMENTS SINCE MARCH 1, 2011

APPRAISAL

An amendment to [R162-103](#) was made effective on April 26, 2011. This amendment makes the following changes:

- In applying for certification, a school's directors, owners, and instructors must disclose whether they have ever entered a plea in abeyance or diversion agreement to a criminal charge.
- In order to receive credit for pre-licensing or continuing education courses, a student must attend 100% of the scheduled class time.
- An individual may be awarded up to one-half of the required continuing education credit for teaching, program development, authorship of textbooks, or similar activities.
- Service on the education review committee, experience review committee, and technical advisory panel may constitute continuing education credit if approved by the Board as a course in accordance with standards set by the AQB.

An amendment to [R162-104-14](#) was made effective on June 22, 2011. This amendment provides that, if an applicant's experience was approved under a segmented application, but the applicant did not pass the exam by December 31, 2010, the applicant has until December 31, 2011 to complete any additional education that is required, pass the exam, and submit a complete application. An applicant who is not able to meet this deadline must submit new appraisals for review by the experience review committee in addition to meeting all other qualifications for licensure/certification.

The Board and the Division have reorganized the existing rules in order to mirror the organization and numbering of the appraiser statute (§ 61-2g, effective May 10, 2011). The reorganization also includes the following substantive changes:

- State-licensed appraisers and state-certified residential appraisers will be prohibited from performing appraisals of vacant land if the highest and best use of the land is for five or more one- to four-family units.

- Trainees will be required to document in their experience logs all experience hours completed from the date of trainee registration to the date of application for licensure. In other words, a trainee may not stop logging experience once the trainee reaches 2,000 hours. Nor may a trainee leave an assignment off the log so as to avoid having that assignment reviewed as part of the licensing process.
- The appraisals submitted by mass appraisers and mass appraiser trainees for consideration by the Experience Review Committee and the Board must be selected from an applicant's most recent work. The reorganized rules will be published for comment in the [Utah State Bulletin](#) on July 1, 2011. Comments will be accepted through August 1, 2011.

APPRAISAL MANAGEMENT

On June 22, 2011, three amendments were made effective, as follows:

- [R162-2e-201](#): An AMC must register with the Utah Division of Corporations and Commercial Code and provide to the Division its certificate of existence in order to obtain a registration.
- [R162-2e-304](#): When disclosing to an appraiser the total amount that the appraiser may expect to earn from an assignment, an AMC must account for any cost or fee that will be charged to the appraiser.
- [R162-2e-401](#): An AMC may not charge an appraiser a cost or fee that is inflated above the actual cost of a service provided by a third party or that is charged for a service not actually performed.

MORTGAGE

On May 10, 2011, two rule amendments were made effective, as follows:

- [R162-2c-201\(5\)](#): A principal lending manager may not simultaneously serve as a branch lending manager, and an individual may not serve as the branch lending manager for more than one branch at any given time.

- [R162-2c-202](#): The specific factors that disqualify an applicant from licensure are outlined.

On July 1, 2011, amendments will be published in the [Utah State Bulletin](#) to interpret new statutory language requiring mortgage licensees to safeguard their mortgage records during the four-year retention period. These amendments are as follows:

- R162-2c-102: Definitions are proposed for the terms “safeguard” and “personal information”
- R162-2c-301: Language is added to clarify that a mortgage entity must safeguard records that it is required to keep, and must destroy all personal information at the end of the retention period.

Public comments will be accepted through August 1, 2011.

REAL ESTATE

On July 1, 2011, four rule amendments will be published for comment in the [Utah State Bulletin](#), as follows:

- R162-2f-102: The term “residential property” is defined.
- R162-2f-205: The Division may not register an entity if it proposes to use a business name that closely resembles the name of another registered entity, or that the Division determines might otherwise be confusing or misleading to the public.
- R162-2f-401a: In order to offer a property for sale or lease, a licensee must make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property. In order to offer a residential property for sale, a licensee must disclose the source on which the license relies for any square footage data that will be used in the marketing of the property. This disclosure must be made in the listing agreement executed between the licensee and the seller and also in a written disclosure to the buyer on or before the contract deadline for seller disclosures.
- R162-2f-403: Unless otherwise agreed in writing by the parties who have an interest in funds held by a principal broker, the principal broker may not pay a commission from the real estate trust account without first depositing the withdrawn funds into the brokerage operating account.

Public comments will be accepted through August 1, 2011.

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Complaints Regarding AMCs

respond. Note that the statute allows an appraiser to be removed *for any reason*, provided that notice is given. Under [Utah Code § 61-2e-307\(2\)\(i\)](#), the DRE may take action against an AMC that fails to provide notice and an opportunity for response, as required. An appraiser who believes he or she has been removed from a panel without proper notice should file a complaint with the DRE.

If, in the struggle to adapt to this new business model involving AMCs, an appraiser starts cutting corners in order to maximize profits, the DRE needs to know about it. Any appraiser who fails to comply with USPAP—and who is turned into the DRE—will be investigated, and an appropriate action will be taken. Any AMC that can be shown to have influenced an appraiser to produce unreliable or misleading reports will also be investigated and sanctioned as appropriate. Ultimately, the responsibility to produce credible reports lies with the appraiser. The DRE is prepared to take action against any appraiser who engages in unprofessional conduct. Bring us specific complaints, and we will use existing regulations, like those discussed above, to bring bad actors to the Appraiser Board for discipline. Taking these people out of the industry will protect the public and will also help to create a more level playing field in the new marketplace. ❁



HAPPY 4TH OF JULY

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"COMMON" DEFINITIONS OF REAL ESTATE TERMS....

What do they really mean?

ACTIVATE: License is valid. An agent with an active license is affiliated with a broker and is permitted to engage in the business of a real estate agent. An active license must be renewed every two years with continuing education.

INACTIVE: License is in good standing, but agent is unaffiliated with a broker and prohibited from acting as a real estate agent. Inactive agents may activate at any time by meeting the activation requirements. An inactive agent must still renew the license every two years.

REFERRAL STATUS: MYTH! This is not a term used or recognized by the Division.

PLACE MY LICENSE ON HOLD: MYTH! The Division does not place a license "on hold" in any circumstances.

RENEWAL: License renewal is required once every two years regardless of whether the license is active or inactive. The renewal must be completed in order to extend the expiration date of the license. If the license is not renewed, the license will expire.

EXPIRED: License is void. An agent must renew or reinstate the license in order to return the license to good standing with the Division. A person holding an expired license is unlicensed.

REINSTATEMENT: The process of renewing a license that has been expired for over 30 days. A license may be reinstated for up to one year after the license has expired. Additional continuing education and fees are imposed for reinstatement.

Second Quarter 2011 Licensing Actions & Disciplinary Sanctions

about market condition that were incongruous with both the data contained in the reports and the final valuations provided, failed to report and analyze comparable properties that had sold at significantly lower prices, failed to make appropriate adjustments to superior properties used as comparables, and used non-multiple listing service sales as comparables without stating the steps he took to verify the sales as bona fide arms-length transactions, with the result that he significantly overvalued all four properties. These actions violate USPAP Standards Rules 1-1(a), 1-1(b), 1-1(c), 1-2(a), 1-5(b), 1-6(a), 2-1(a), and 2-1(b), as well as Utah Code § 61-2b-29(2)(c), now recodified as Utah Code § 61-2g-502(2)(c). Case numbers AP-35503, AP-35934, AP-45292, AP-45293, AP-43316, AP-10-51256.

MORTGAGE

BASSO, JUSTIN, Mortgage Loan Originator license, Draper, UT. In an April 6, 2011 stipulation and order, Mr. Basso agreed to have his license suspended for a period of six months and to pay a civil penalty of \$5,000. In violation of Utah Code § 61-2c-301(1), Mr. Basso used \$32,236.63 of funds from his personal credit union account toward the down payment on a loan that he originated for another person. He did not disclose to the lender or on the settlement statement that the down payment came from his own account. Case number MG-10-50134.

BETTS, DERRICK S., Principal Lending Manager applicant, Heber City, UT. In an April 26, 2011 order, license granted on a conditional basis pending the outcome of a criminal case currently pending against Mr. Betts. If he is convicted of a felony, the Division shall terminate the license. If the case is resolved through a plea in abeyance, a misdemeanor conviction, or any



outcome other than a felony conviction, the license shall remain on probation, to be reviewed if Mr. Betts requests license renewal. Case number MG-11-54747.

BREIVIK, JOHN A., Mortgage Loan Originator renewal applicant, Pleasant Grove, UT. In a March 9, 2011 order, license denied due to a conviction (June 22, 2010) for insurance fraud, a class A misdemeanor. During the criminal proceedings, Mr. Breivik admitted that he intentionally submitted a fraudulent loss claim. In addition, Mr. Breivik failed to report his conviction to the Division within 10 business days as required by statute, and he failed to disclose his criminal conviction in response to the licensing questionnaire. In an April 11, 2011 order on appeal, license denial upheld by the Commission. Case number MG-11-54057.

BRIGGS, WAYNE, Mortgage Loan Originator license (expired), Santa Clara, UT. In a May 9, 2011 order following a disciplinary hearing before the Commission, Mr. Briggs was assessed a \$25,000 civil penalty with the provision that \$3,000 of the penalty will be permanently suspended if Mr. Briggs reimburses a former employee for certain costs she incurred in his behalf. In violation of Utah Code § 61-2c-302(2) and Utah Administrative Code § 61-2c-302(1)(a), Mr. Briggs, through his failure to make payments on a storage unit, lost possession of mortgage records containing personal information including social security numbers, driver license numbers, bank account numbers, and other sensitive financial information. At the time the Division seized the records and had them shredded, Mr. Briggs had been locked out of his unit, and the storage facility anticipated selling the contents of the unit, including the mortgage records of at least 100 Utah consumers, at public auction within the week. Case number MG-10-45659.

EGGLETON, BRIAN KEITH, Associate Lending Manager renewal applicant, Salt Lake City, UT. In an April 13, 2011 order, license granted on probation until such time as Mr. Keith demonstrates to the satisfaction of the Division that his judgments and collectible debts have been paid or otherwise discharged and that he has formalized a plan with the Internal Revenue Service for satisfying a tax arrearage. Case number MG-11-54539.

GARRETT, GRAY, Associate Lending Manager renewal applicant, Cottonwood Heights, UT. In an April 25, 2011 order, license granted on probation until such time as Mr. Garrett demonstrates to the satisfaction of the Division that he has formalized a plan with the Internal Revenue Service to satisfy his delinquent tax obligations or, alternatively, that he has otherwise discharged the arrearage. Case number MG-11-54729.

HARTLE, DANIEL R., Associate Lending Manager renewal applicant, Lindon, UT. In an April 11, 2011 order following a hearing before the Commission, license granted on probation for the renewal period due to an August 19, 2009 misdemeanor conviction. Case number MG-10-52915.

HOLBROOK, TYSON K., Associate Lending Manager renewal applicant, Sandy, UT. In an April 12, 2011 order following a hearing before the Commission, license denied on a finding of misconduct in a professional capacity that relates to moral character, honesty, integrity, truthfulness, and the competency to transact the business of residential mortgage loans. In violation of Utah Code § 61-2c-301(1) (l), Mr. Holbrook knowingly made multiple false statements and representations in multiple loan applications that he submitted to lenders on behalf of borrower, such that loan fraud was perpetrated. Case number MG-11-53297.

HOWES, JILL M., Unlicensed Individual, Bountiful, UT. In a March 2, 2011 stipulation and order, Ms. Howes agreed to pay a civil penalty of \$2,400. In violation of Utah Code § 61-2c-201, Ms. Howes originated and participated in the negotiation of loan modifications without being licensed as a mortgage loan originator. Case number MG-10-52295.

LENK, EVERETT WADE, Mortgage Loan Originator applicant, Livonia, MI. In a May 10, 2011 order, license granted on probation until such time as Mr. Lenk demonstrates to the satisfaction of the Division that he has formalized a plan with the Internal Revenue Service for satisfying a tax arrearage. Case number MG-11-54917.

LLAN, NIKI MORALES, Mortgage Loan Originator renewal applicant, Orem, UT. In a March 1, 2011 order, license granted on probation until Ms. Morales demonstrates to the Division that she has satisfied a tax arrearage. Case number MG-11-53903.

MODIFYUTAH, INC., Mortgage Entity license, American Fork, UT. In an April 6, 2011 stipulation and order, ModifyUtah, Inc. agreed to pay a civil penalty of \$10,000. In violation of Utah Code § 61-2c-301(1)(s) and Utah Administrative Code § R162-2c-301(3)(b), the company employed an unlicensed individual who was allowed to negotiate loan modifications. Case number MG-10-50135.

MONSON, DAVID PAUL, Associate Lending Manager renewal applicant, South Jordan, UT. In an April 11, 2011 order, license granted on probation until such time as Mr. Monson demonstrates to the satisfaction of the Division that he has formalized a plan with the Internal Revenue Service for satisfying a tax arrearage. Case number MG-11-54538.

MORRIS, LAVERNE LUCILLE, Mortgage Loan Originator renewal applicant. In an April 25, 2011 order, license granted on probation until such time as Ms. Morris demonstrates to the satisfaction of the Division that she had formalized a plan with the Internal Revenue Service for satisfying a tax arrearage or taken alternate steps to discharge the delinquency. Case number MG-11-54735.

PHIPPEN, SCOTT L., Associate Lending Manager renewal applicant, Draper, UT. In an April 25, 2011 order, license granted on probation until such time as Mr. Phippen demonstrates to the satisfaction of the Division that he has formalized a plan with the Internal Revenue Service for satisfying a tax arrearage. Case number MG-11-54738.

PITTA, JORGE, Unlicensed Individual, Saratoga Springs, UT. In a May 4, 2011 stipulation and order, Mr. Pitta agreed to obtain a mortgage loan originator license by December 31, 2011 and to pay a civil penalty of \$10,000, of which \$5,000 will be suspended if he obtains his license as agreed. In violation of Utah Code §§ 61-2c-201(1) and (4), Mr. Pitta originated and participated in the negotiation of loan modifications without being licensed as a mortgage loan originator. Case number MG-10-52628.

RASMUSSEN, AARON D., Principal Lending Manager renewal applicant, Highland, UT. In a

May 2, 2011 order, license granted on probation until such time as Mr. Rasmussen demonstrates to the satisfaction of the Division that he has filed his 2006 tax information with the Utah State Tax Commission and made arrangements to pay any amounts that might be assessed under that filing. Case number MG-11-54813.

TAKEMORI, JOANN MARIE, Mortgage Loan Originator renewal applicant, Murray, UT. In a May 9, 2011 order, license granted on probation until such time as Ms. Takemori demonstrates to the satisfaction of the Division that she had formalized a plan with the Internal Revenue Service for satisfying a tax arrearage. Case number MG-11-54893.

SCOVILE, JOSHUA, Mortgage Loan Originator renewal applicant, Salt Lake City, UT. In a March 1, 2011 order, license granted on probation until Mr. Scoville demonstrates to the Division that he has satisfied a tax arrearage. Case number MG-11-53904.

W.J. BRADLEY MORTGAGE CAPITAL CORP., Mortgage Entity license, Denver, CO. In a March 2, 2011 stipulation and order, the company agreed to pay a civil penalty of \$10,000. In violation of Utah Code § 61-2c-301, the company employed an unlicensed individual as a mortgage loan originator and paid this individual for originating and closing four loans. Case number MG-10-49739.

WETTERHALL, PETER L., Mortgage Loan Originator applicant, Bountiful, UT. In an April 26, 2011 order, license granted on a conditional basis pending the outcome of a criminal case. If Mr. Wetterhall is convicted of a felony, the Division shall terminate his license. If the case is resolved through a plea in abeyance, a misdemeanor conviction, or any outcome other than a felony conviction, the license shall remain on probation, to be reviewed if Mr. Wetterhall requests license renewal. Case number MG-11-54745.

WHITAKER, ANTHONY HARVEY, Mortgage Loan Originator applicant, Orem, UT. In an April 25, 2011 order, license granted on probation until such time as Mr. Whitaker demonstrates to the satisfaction of the Division that he has formalized an agreement with the Internal Revenue Service under which he will satisfy or otherwise discharge delinquent tax obligations. Case number MG-11-54731.

ZAPLANA, DAVID R., Unlicensed Individual, Herriman, UT. In a May 4, 2011 stipulation and order, Mr. Zaplana agreed to obtain a mortgage loan originator license by December 31, 2011 and to pay a civil penalty of \$15,000, of which \$7,500 will be suspended if he obtains his license as agreed. In violation of Utah Code §§ 61-2c-201(1) and (4), Mr. Zaplana originated and participated in the negotiation of loan modifications without being licensed as a mortgage loan originator. Case number MG-11-54212.

REAL ESTATE

ALLEN, RHETT D., Sales Agent renewal applicant, Draper, UT. In an April 5, 2011 order, license granted on probation for the duration of Mr. Allen's criminal probation, as imposed upon his no contest plea (May 13, 2010) to a misdemeanor charge. Case number RE-11-54490.

BOLLOW, RUSSELL P., Sales Agent renewal applicant, South Jordan, UT. In a March 16, 2011 stipulation and order, Mr. Bollow agreed to have his license placed on probation for the renewal period and to pay a civil penalty of \$750. In violation of Utah Code § 61-2f-301, Mr. Bollow failed, on three occasions, to report to the Division within 10 business days of suffering a conviction or entering a plea in abeyance to a criminal offense. Case number Re-11-53952.

CHRISTENSEN, CURTIS J., Sales Agent license, Ogden, UT. In a March 16, 2011 stipulation and order, Mr. Christensen agreed to pay a civil penalty of \$500 and complete two hours of continuing education in Utah law. In violation of Utah Administrative Code § R162-2f-401a(3), Mr. Christensen acted as a limited agent without first obtaining a limited agency agreement. In addition, he failed to provide copies of all documents to each party. Case number RE-11-53428.

DALTON, JASON G., Sales Agent license, Salt Lake City, UT. In a May 18, 2011 stipulation and order, Mr. Dalton agreed to have his license placed on probation for the remainder of the license period. In violation of Utah Code § 61-2f-301, Mr. Dalton failed to report to the

Division within 10 business days of entering into a plea in abeyance to a criminal charge. Case number RE-11-53880.

HOFFMEISTER, COOPER B., Sales Agent reinstatement applicant, Salt Lake City, UT. In a May 10, 2011 order, license granted on probation for the duration of Mr. Hoffmeister's six-month abeyance period, as imposed upon his guilty plea to a misdemeanor charge. Case number RE-11-54903.

HOLMES, MICHAEL R., Sales Agent license, Salt Lake City, UT. In a March 16, 2011 stipulation and order, Mr. Holmes agreed to pay a civil penalty of \$250. In violation of Utah Code § 61-2f-301, Mr. Holmes failed to report to the Division within 10 business days of entering into a diversion agreement to a criminal charge. Case number RE-11-53621.

JOHNSTON, JUSTIN D., Associate Broker license, Pleasant Grove, UT. In a March 16, 2011 stipulation and order, Mr. Johnston agreed to pay a civil penalty of \$250. In violation of Utah Code § 61-2f-301, Mr. Johnston failed to report to the Division within 10 business days of entering into a plea in abeyance on a criminal charge. Case number RE-11-53391.

MCKELLAR, KAYLAA., Principal Broker license, West Jordan, UT. In a March 16, 2011 stipulation and order, Mr. McKellar agreed to pay a civil penalty of \$250. In violation of Utah Code § 61-2f-301, Ms. McKellar failed to report to the Division within 10 business days of entering into a plea in abeyance on a criminal charge. Case number RE-11-53521.

PRIEST, JIMMIE BLAKE, Principal Broker license, Ogden, UT. In a March 16, 2011 stipulation and order, Mr. Priest agreed to pay a civil penalty of \$1,200, to have his principal broker license placed on probation, and to take 10 hours of Utah law continuing education. In violation of Utah Code § 61-2f-401(6), Mr. Priest closed a brokerage and opened a new one, but did not execute new listing agreements with existing clients in order to establish agency for the new brokerage. Case number RE-10-52395.

RIEPER, ERIC R., Sales Agent license, Sandy, UT. In a May 18, 2011 stipulation and order, Mr. Rieper agreed to pay a civil penalty of \$250. In violation of Utah Code § 61-2f-301, Mr. Rieper failed to report to the Division within 10 business days of being convicted of a misdemeanor. Case number RE-11-53574.

SALAZAR, JOHNA., Branch Broker license, Holladay, UT. In a May 18, 2011 stipulation and order, Mr. Salazar agreed to pay a civil penalty of \$250. In violation of Utah Code § 61-2f-301, Mr. Salazar failed to report to the Division within 10 business days of being convicted of a misdemeanor. Case number RE-11-54049.

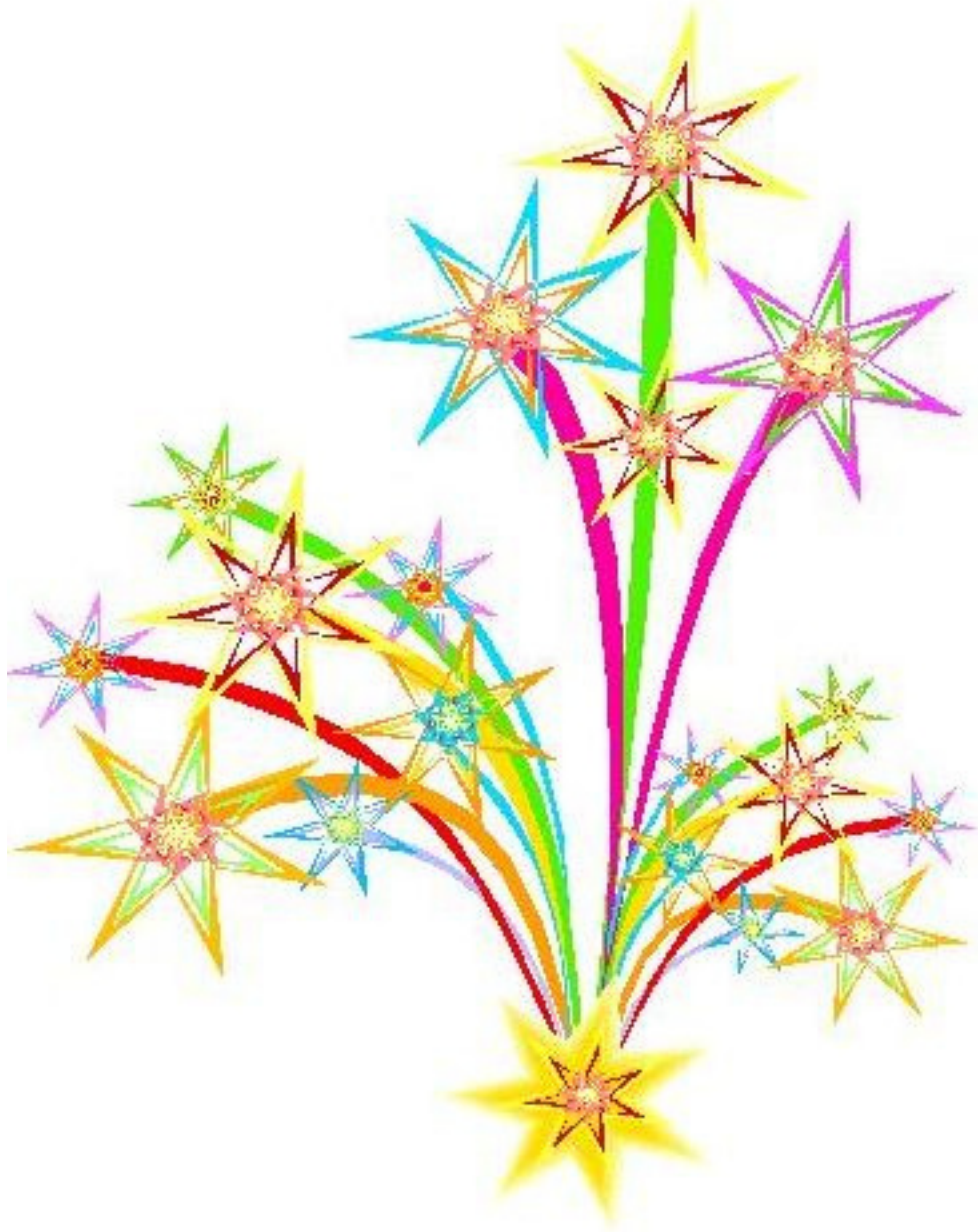
SHAWLER, TERRY G., Sales Agent renewal applicant, St. George, UT. In a May 5, 2011 order, license placed on probation for the duration of Mr. Shawler's criminal probation, as imposed upon his no contest plea to two misdemeanor charges. Case number RE-11-54870.

WARREN, RICHARD L., Sales Agent reinstatement applicant, Sandy, UT. In a March 2, 2011 order, license granted on probation for the duration of Mr. Warren's criminal probation, as ordered on his being convicted (May 18, 2010) of a misdemeanor. Case number Re-11-53918.

WILKES, CHRISTIE L., Associate Broker license, Heber City, UT. In a March 16, 2011 stipulation and order, Ms. Wilkes agreed to pay a civil penalty of \$250. In violation of Utah Code § 61-2f-301, Ms. Wilkes failed to report to the Division within 10 business days of entering into a plea in abeyance on a criminal charge. Case number RE-11-53568.

ZIMMER, JARED, Principal Broker license, Cedar City, UT. In a May 18, 2011 stipulation and order, Mr. Zimmer agreed to pay a civil penalty of \$2,000 and to successfully complete a two-hour course on Utah law, which he may not use to satisfy his continuing education requirement for renewal. In violation of Utah Administrative Code § 61-2f-401g, Mr. Zimmer allowed unlicensed staff to provide information to the public pertaining to real property. In violation of Utah Administrative Code § 61-2f-401b(17), Mr. Zimmer failed to obtain written authorization from his principal prior to changing a sale price on the multiple listing service. Case number RE-10-51342.





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