

# Division of Real Estate

Gary R. Herbert, Governor

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Third Quarter 2015

## Director's Message What Is Your Name?

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Jonathan Stewart

#### **Real Estate**

R162-2f-401h, Requirements and Restrictions in Advertising, states:

(1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records...

As you can see from this administrative rule, there is a requirement to advertise under the real estate or property management brokerage as shown on the division records. When applying for a license, we do require that you provide us with your full given name, which is what will be placed on the Division records and on your license. However, there is no requirement in statute

I was recently asked about using a nickname or a name other than a "given name" in advertising. This issue comes up from time-to-time. What is required by law?

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or rule about using your full given name in advertising. For example, my given name is Jonathan, but I have always gone by Jonny. If I were a licensed real estate agent or broker, I could advertise using the name Jonny.

## Mortgage

R162-2c-209, Sponsorship, states:

- (1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:
  - (a) the entity;
  - (b) a branch office registered under the license of the entity; or
  - (c) another trade name registered under the license of the entity.

Once again, there is no requirement about the use of an individual's name in advertising. If a mortgage licensee is advertising, they are only required to advertise using either the entity name, a branch office name (that has been registered), or another trade name (that has been registered).

R162-2c-301a, Unprofessional Conduct, states:

- (1) Mortgage loan originator.
  - (a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:
    - (i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;
    - (ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

If a mortgage licensee is going to solicit or conduct business, they need to do it in the name of the sponsoring entity. As long as you are using the entity name, branch office name, or another registered trade name, you would be in compliance with this portion of the administrative rules.

## Some Considerations

The following are only suggestions and are in no way required.

1. If you are going to use a shortened version of your name, your middle name, or use a nickname, you may want to consider using your full given name as well. Some advertisements I have seen look something like this: Jonathan (Jonny) Stewart.
2. You could also incorporate your license number into advertising.

Using your full given name in advertising is not a requirement, but you may want to consider giving additional information to avoid confusion and to help potential clients locate you and differentiate you from agents with similar names.





## Mortgage License - Renewal - Be Prepared!

All Mortgage licenses are renewable on an annual basis. Renewal requests can be made on your NMLS filing between November 1 and December 31. You can prepare now so that your renewal will go smoothly by following the checklists, one for **entities** (companies, branches, dbas) and one for **individuals** (loan originators and lending managers).

### **Individual Renewal Checklist** (Loan Originators and Lending Managers)

#### **Prior to November 1, 2015**

1. Review your filing in the NMLS to make sure your information is current and correct. This includes mailing address, email, phone numbers, name, and employment history.

**\*\*REFER TO YOUR INDIVIDUAL NMLS DASHBOARD TO REVIEW OUTSTANDING REQUIREMENTS AND/OR DEFICIENCIES\*\***

2. Review your filing to make sure there are no license items placed. License items can be deficiencies or requirements that are pending on your license and must be cleared prior to requesting renewal. Some common deficiencies include Employment History Updates, ACH Payments that may have been returned unpaid, requests for information about Disclosure Questions or Credit Reports. Satisfy all pending license items prior to renewal. You may call the licensing department at 801-530-6747, if you do not understand your deficiency or need help in getting it cleared. When a license item is placed on your filing, you receive an email through the NMLS notifying you of the deficiency or requirement.

3. If your driver's license number has changed, be sure to indicate this update on your filing, as well as your US citizenship status. This is found under the Identifying Information section of the MU4 form. If this information is incorrect or incomplete, we may place a deficiency on your license requiring you to provide the Division with a Certificate of Legal Presence. [http://realestate.utah.gov/forms/cert\\_legal\\_pre\\_s\\_fillable.pdf](http://realestate.utah.gov/forms/cert_legal_pre_s_fillable.pdf). If your information is recorded accurately on your filing, you *will not* need to submit this form (Certificate of Legal Presence) to us as you may have done in prior years.
4. NMLS-approved continuing education (8 hours) must be completed prior to requesting renewal. It is recommended that to insure an on time renewal, these hours must be completed no later than December 15, 2015. The NMLS will prevent you from requesting renewal if these hours are not banked.
5. Utah specific continuing education on Utah Law (2 hours) must be completed prior to renewal approval. Note: The NMLS system will not prevent you from requesting renewal, but if we later find you have not completed the 2 hours of Utah law, a deficiency will be placed on your filing and your renewal will not be approved until the hours are completed. To find providers for this course, you must go to the Utah Division of Real Estate website to find a list of approved providers.

[http://realestate.utah.gov/forms/MO\\_CE\\_Providers1.pdf](http://realestate.utah.gov/forms/MO_CE_Providers1.pdf)

**Note: To insure an on time renewal, these hours must be completed no later than December 15, 2015. It is also important to note that these hours will not be banked in your NMLS account. These hours will only be tracked in the Utah DRE database.**

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6. If your license is on probation and there are requirements that must be completed at renewal, either to have the probation removed or as terms of the probation, make sure these items are reported to the Division before you request renewal. This will aid in getting your renewal processed in a timely manner.
7. A CREDIT REPORT and BACKGROUND CHECK ARE BOTH REQUIRED THIS YEAR. These requirements come into play on every fifth year, including this year, in conjunction with the 2015 renewal for your 2016 license. You will need to authorize these two items with your 2015 renewal.

## ***On or After November 1, 2015:***

1. You can now request renewal. The renewal fee is \$78.00 (which includes the NMLS processing fee of \$30, Renewal fee of \$30.00 and Recovery Fund fee of \$18.00). You will need to authorize your credit report fee of \$15.00. You will also need to authorize one of two criminal background check methods: 1) LiveScan (electronic), processing fee of \$36.25, or 2) Paper Card Capture (if LiveScan is not selected), processing fee of \$36.25 plus a \$10.00 Card Packet Fee. You will be required at that time to attest to the accuracy of your filing so make sure, once again, that all is correct.

2. If there is a change in your answers to the Disclosure Questions, you must upload the required documentation explaining the change in your filing.
3. If you request your renewal prior to January 1, 2015, your license will remain in the status that it was prior to renewal. If your status was active, you can continue to work as usual. Your renewal approval is contingent on all requirements being met, in which case the Division will process the renewal as quickly as possible and email your new license to you.

## **Entity License Renewal (company, dbas, branches):**

### ***Prior to November 1, 2015***

1. Review MU1 filing and/or MU3 filing to confirm that all the information, company location, mailing address, contact information, etc., is all correct.
2. If there is a change in your answers to the Disclosure Questions, you must upload the requirement documentation explaining the change in your filing.
3. Review the entity filing to make sure there are no license items placed on the filing. These items could include things like a returned ACH Payment, update qualifying individual, company ownership, etc.

### ***On or After November 1, 2015:***

1. Request and pay renewal fees through NMLS between November 1 and December 31, 2015.
2. If renewal is requested prior to January 1, 2016, the license will remain in the status that it was prior to renewal. If the status was active, work can continue as usual. Your renewal approval is contingent on all requirements being met, in which case, the Division will process the renewal as quickly as possible and email your new license to the email address listed in the contact information.



# Division of Real Estate

## - Year End Mortgage -

### Fingerprint & Credit Reporting Required

(This article is a reprint from the March and June 2015 newsletter)

Utah Mortgage licensees, who transitioned onto the NMLS system back in 2010, were required to be (re)fingerprinted, and authorize the issuance of a credit report. Subsequently, the Division reviewed, and in some instances took licensing actions restricting some licensees based upon the results of the fingerprint and credit reports.

Since 2010 some states have required annual fingerprint and credit reporting when determining the competency of renewing mortgage licensees. Other states, including Utah, have taken a less assertive approach to requiring mortgage licensees to submit to recurring fingerprinting and credit reporting.

On November 20, 2013 The Utah Residential Mortgage Commission & The Utah Division of Real Estate approved amendments to Administrative Rule R162-2c-204 to require the reauthorization of fingerprints and credit reporting as indicated below:

For the renewal period beginning November 1, 2015, licensees filing to renew a license are required to submit a fingerprint background report and a credit report. The rule amendment also requires all renewing licensees to submit a fingerprint background report and a credit report every fifth year after 2015.

The fourth quarter 2013 Division Newsletter, announced this previously referenced Administrative Rule Amendment. **This article is intended to further inform and notify all Utah mortgage licensees that when they submit a license renewal this fall (11/1/15 – 12/31/15), they will be required to re-authorize fingerprint and credit reporting.**



The NMLS has advised the Division that some fingerprint records “expire”, which will necessitate that licensees with “expired” fingerprint records, will be obligated to submit new fingerprint cards. To know if your fingerprint records have “expired”, licensees should review their individual records in the NMLS.

In addition, **anyone receiving an initial/new Utah mortgage license (Mortgage Loan Originator or Lending Manager) between the dates 1/1/15 – 10/31/15, will also be required to re-authorize fingerprint and credit reporting in conjunction with their 2016 license renewal (11/1/15 – 12/31/15).**

The Division will review and evaluate the results of the fingerprinting and credit reporting to determine what if any further licensing action(s) may be prompted as a result of these recent reporting requirements.

Now as we move forward, Utah mortgage licensees can anticipate that every five years the fingerprint and credit reporting process will be repeated.

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## *In Memory of - Jan N. Buchi*

On July 1, 2015 our beloved Jan Buchi passed away. Jan worked as the Division's Mortgage Education Coordinator for the past six years. Jan made considerable contributions to the Division and the mortgage industry in multiple ways including easing licensees through the transition process of exclusive state regulation into the Nationwide Mortgage Licensing System (NMLS) back in 2010 and in each subsequent year.

Division staff and mortgage licensees will miss Jan's always pleasant demeanor, her lively sense of humor, her keen understanding of licensing

requirements, her tenacious work ethic, and her ability to reduce very complex and complicated procedures and processes into their most fundamental and simplified steps.

Those of us who were fortunate to have worked with Jan share a deep sense of loss, but are grateful for the fond memories and associations that we had with our now departed co-worker and friend. Her efforts will be missed, but the legacy she fostered will endure. Our deepest sympathies are extended to her family and friends for their loss.

## Home Warranty Products

Kathy Archuleta - Utah Insurance Department

The standard Real Estate Purchase Contract (REPC) used in most home purchases contains a section that allows for the optional purchase of a home warranty. A home warranty product is often utilized by a seller as an incentive to the home buyer to purchase the home.

Unfortunately, there are warranty products that are not legitimate. A home warranty product can only be issued, sold, or offered by a home warranty provider that is licensed with the Utah Insurance Department. It is a violation of Utah Code Ann. §31A-6a to issue, sell, or offer a home warranty product by a home warranty provider that is not licensed with the Insurance Department.

The Insurance Department has received complaints that buyers were directed to a home war-

ranty company only to find out later that the company is not licensed in the State of Utah.

The Insurance Department, which regulates home warranty companies, strongly encourages real estate professionals to do their homework before referring home warranties to clients. Doing so will ensure the company is properly licensed and covered claims will be paid. The Insurance Department wants to be your partner in ensuring home buyers in Utah have a good experience.

There are several ways to verify if a home warranty provider is licensed to do business in the State of Utah:

- You can go to the Utah Insurance Department's website and type in the name of the provider: <https://secure.utah.gov/agentsearch/search.html#>
- You can contact the Property and Casualty Division of the Utah Insurance Department at 801-538-3800 or toll free 800-439-3805.



## 11 Things Every Real Estate Licensee Should Know About Managing and Operating Rental Properties in Utah

By L. Paul Smith

Executive Director, Utah Apartment Association

Real estate licensees take upon themselves a higher standard than individuals who own or personally manage rental properties. Real estate licensees are subject to specific regulations by the Utah Division of Real Estate (DRE). The DRE recently spoke to Utah Apartment Association (UAA) representatives about existing Administrative Rules and how association members could improve their compliance with these rules.

### **LICENSEES THAT RENT PROPERTIES THEY OWN**

There are two rules licensees who rent their own properties need to be aware of concerning advertising and signing leases:

1 - Because you have a real estate license, you must disclose you are a licensed agent in your advertising if you are not listing the property with your broker. You can do this by adding the words "Owner/Agent" or "Owner/Broker" to your advertising (R162-2f-401h(1)(b)). This includes, but is not limited to online ads, signs, and any printed fliers. The DRE can fine or sanction you if you don't disclose this to potential renters. In order to avoid any potential issues related to this rule, best practice would be to always advertise if you are an owner of the property to be rented or sold.

2 - Likewise, when you sign a lease, because you are a licensed agent, you must disclose this in all of your leases. The same phrase "Owner/Agent"

should be added on the signature line where you sign. Disclosing your status as a licensee is required and the DRE can sanction and fine you if you don't. Also, your failure to disclose that you are a licensed agent could be viewed in a negative light in any legal entanglement with your tenants.

### **MANAGING PROPERTIES FOR OTHERS**

Unless exempted by law (Utah Code 61-2f-202(1)), when you manage properties for others you **MUST** have a real estate license and process rents received through a trust account. In addition, there are several additional things you need to know and practice.

### **TRUST ACCOUNTS**

3 - If you only manage a few properties, you can run funds through your regular brokerage trust account. But when you get more than six units, you must create a dedicated property management trust account.

4 - If you have any client money in a trust account, you must return this money to the client or the new broker within 30 days of termination of your management agreement. This means if you stop managing for them for any reason, you transfer any client funds (i.e. security deposits, rents, reserve funds, etc.) to the client, new property manager, or any other party designated to receive these funds in the property management agreement within 30 days.

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5 - While it is most common for property managers who are licensed to keep renter's security deposits in their trust account, under Utah law, clients can contractually agree to keep that money themselves in their own account. This is common with the sophisticated large apartment complexes that hold hundreds of thousands of dollars in trust, but less common (and usually not advised) for clients who own a single family home or a few small rental properties.

## AGENCY DISCLOSURE

The DRE recently spoke to UAA representatives and clarified some existing Administrative Rules on agency disclosure (R162-2f-401a (1-5,10)), and how UAA members could improve their compliance with these rules.

6 - The first step in the discussion of agency and agency disclosure is the **creation** of an agency agreement between the owner of a rental property and your real estate brokerage (through a property management agreement). The management agreement should clearly define the relationship of the parties (Owner and Agent) and define the scope of the agent's responsibilities and authority. Be clear in your property management agreement who you represent. Most management agreements have some kind of language like this, but double check yours and get help clarifying if there are any questions. For sample property management contracts and clauses contact the Utah Apartment Association.

7 - The second requirement in agency disclosure requires that you **disclose** to tenants PRIOR to signing a lease that you represent the Owner of the Property, and DO NOT represent them (tenants) as an agent or fiduciary. In a sales transaction, the parallel is the buyer's agency form that all clients should be signing before you show them real estate. Since it may not be practical to get a signed disclosure from all potential renters who may look at a

rental property, the DRE will allow you to put language in your rental application to the effect that the applicant understands that the licensee represents the Owner and does not represent the tenant as an agent.

8 - The final requirement in agency disclosure is to **confirm** your contractual agency relationship to the parties entering into a rental agreement contract. There is a requirement for licensees that there be language in your lease stating the agency relationship you have with the Owner and/or Tenant that the licensee is an agent ONLY for the owner and not for the renter. The July 2015 revised UAA Residential Rental Agreement has such language included in the agreement. For examples of any of these forms or sample language, contact the UAA.

## PAYING REFERRAL FEES

9 - The DRE regulations allow licensees to pay up to a \$200 referral fee to an existing tenant or an unlicensed employee. It is also acceptable to solicit referrals with this promise, or to reward an existing tenant or employee with up to \$200 for each tenant they refer/lease to.

## DISCLOSURE OF AUTHORITY TO SIGN FOR OWNERS

10 - Property managers are sometimes authorized to sign things on behalf of clients. In your property management agreement, you should have clear language that specifies what authority you have. In most cases, property managers don't have a full power of attorney. Instead, they obtain authority under the management agreement to sign on behalf of clients in certain cases. Common examples include signing leases, contracts for work to be performed on the property, and permission to manage utility accounts. Whatever you're authorized to do, enumerate those things clearly in the management agreement. The division has started to really focus



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on this, and most management agreements aren't clear. If necessary, update yours.

## **AGENTS WHO WISH TO BECOME BROKERS**

11 - The DRE thoroughly reviews all broker applications including by licensees who have worked as a property manager and now want to become a broker. The DRE requires proof of the agency disclosures described in paragraph 6-8 above. Broker applicants are required to complete 60 experience points. Only property management re-

ords that document the disclosure process described above will count towards the necessary 60 experience points. In addition, to receive experience points for properties you own, you must have a written management agreement with the brokerage completed BEFORE the experience was obtained.

Being a licensed, professional, property manager with a Utah real estate license brings greater responsibilities. But if you clearly understand the requirements you can successfully navigate this rewarding and potentially lucrative profession.



Recently, in the Association of Real Estate License Law Officials' (ARELLO) Newsletter there was an article about current real estate scams that have been identified across the county. Two of the scams mentioned are a Wiring Instruction Scam, the other, "We Buy Homes" sign scam.

### **Wiring Instruction Scam**

In this scam, perpetrators will hack email accounts and monitor when a real estate transaction is going to fund. Prior to funding, they will send a fake, although authentic-looking email with new wiring instructions. We have heard that these emails are used to divert earnest money, buyers' closing cost funds, and sellers' proceeds.

In North Carolina, there was a specific example where a hacker gained access to a broker's email account and sent an email that appeared to be from the broker to the closing attorney. The attorney was instructed to wire the seller's proceeds to a bank account other than the originally identified

bank account in the transaction. The attorney wired over \$272,000 to a foreign bank prior to the crime being discovered. The North Carolina Real Estate Commission has urged, and we second their plea, to "instruct the closing lawyer [or title company] in each transaction not to disburse the seller's proceeds other than as specifically authorized in documents signed by the seller."

### **"We Buy Homes" Signs Scam**

We have all seen the signs around town that say: "We Buy Homes." Recently, the North Carolina Department of Justice issued a warning to homeowners warning them about responding to these types of advertisements. Many of these companies do not do as advertised, but attempt to convince homeowners to sign over control of their home, and then lease the property. Owners lose their rights to the home, but still have a mortgage to pay. More often than not, the companies do not offer to pay cash for the property or help secure a fast payoff for the mortgage.

## Rule Developments Since July 1, 2015

To view and comment on any proposed or amended rules, please visit the Utah State Bulletin at <http://www.rules.utah.gov/publicat/bulletin.htm>

### Appraisal Management

There are no proposed rule amendments under consideration in appraisal management for the third quarter.

### Appraisal

R162-2g-304d and 307d – A proposal to amend these sections was filed August 12, 2015. The proposed amendment of Section 304d clarifies that a licensee may receive experience credit for work without a traditional client up to a maximum of 50% of the required experience and also limits experience credit to the actual hours worked. The proposed amendment of Section 307d clarifies that a licensee may receive credit for up to one-half of the individual's continuing education requirement for participation, other than as a student, in educational processes and programs. The public comment period for this proposed amendment runs through October 1, 2015.

### Mortgage

R162-2c – Several sections were amended in a rule filing which became effective September 4, 2015. The following amendments have been adopted:

1. R162-2c-201 requires a registering entity to list all business and trade names used;

2. R162-2c-203 sets forth certification requirements for instructors of Division-approved courses;

3. R162-2c-205 requires a licensee to update the nationwide database as to any change in the licensee's residential address;

4. R162-2c-301a requires a lending manager to take corrective action for problems identified through the underwriting process, establishes vicarious liability for an entity whose sponsored licensees engage in unprofessional conduct, and requires a mortgage entity to remit appraisal fees within 30 days of receipt;

5. R162-2c-302 specifies that the record retention requirement applies to 1003 loan application forms; and

6. R162-2c-401 establishes that adjudicative proceedings will be designated as either informal or formal when filed and, thereafter, may be converted as provided for in statute.

### Real Estate

R162-2f-401a – A proposal to amend this rule was filed March 3, 2015. A public hearing was held May 20, 2015 to gather more public input on the proposed rule amendment. After considering the public comment received in writing and at the public hearing, the Commission determined to allow the rule filing to lapse. The proposed rule amendment was not adopted.

R162-2f – Every five years, state law requires that an administrative rule be reviewed and either continued or the rule expires. The five year review of the Real Estate Licensing and Practices Rules found in R162-2f occurred during the third quarter and the rule was continued.

### Timeshare and Camp Resort

There are no proposed rule amendments under consideration for the timeshare and camp resort rules for the third quarter.

### Utah Housing

R162-2a – Every five years, state law requires that an administrative rule be reviewed and either continued or the rule expires. The five year review of the Utah Housing Opportunity Restricted Account occurred during the third quarter and the rule was continued. In a separate rule filing, two citation errors were corrected.



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## Lender Payments To Real Estate Licensees

Every once in a while, the Division learns of a situation which can cause our licensees to potentially violate the Division's statutes and rules. Examples have been addressed in the newsletter and on the Division's annual Caravan event. Another issue recently came to the Division's attention, and we feel that it should be passed along to our real estate licensees.

Recently, we have seen emails from commercial lenders who are asking agents to refer clients to the lender for financing. In return, the lender is offering to pay a fee for the referral of business. While RESPA and other lending guidelines may not apply, since this involves an issue of commercial lending, those who are offered the fee may have a problem for accepting such a fee.

Pursuant to administrative rule R162-2f-401a(16), a real estate licensee shall:

*(a) disclose in writing to all parties to a transaction any compensation in addition to any real*

*estate commission that will be received in connection with a real estate transaction; and (b) ensure that any such compensation is paid to the licensee's principal broker.*

Further, pursuant to rule R162-2f-401b(13), a real estate licensee **may not** accept a referral fee from (a) a lender, or (b) a mortgage broker.

By accepting the funds as a real estate licensee, you could find yourself in violation of one or both of the above rules. While this occurs to one of our real estate licensees, the commercial lender, who is not under the Division's jurisdiction, will most likely not have any disciplinary action(s) taken.

Be aware of this and similar situations, and make sure to exercise good judgment before accepting these offers or following instructions from various parties. If you have questions, make sure to discuss these with your broker, attorney, or the Division.

# Division of Real Estate

## THIRD QUARTER LICENSING and 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.

### **APPRAISAL**

PERKINS, RICHARD T., certified general appraiser, Salt Lake City, Utah. In a March 21, 2013 decision, the Appraiser Board and the Division found numerous errors and USPAP violations in reports prepared by Mr. Perkins on three separate properties and his certification was revoked. In addition, Mr. Perkins was ordered to pay a total civil penalty of \$45,000. Mr. Perkins appealed the decision to Third District Court. Thereafter, the parties reached a settlement agreement which was incorporated by the Court in its July 10, 2015 Order on Review which affirmed the revocation of Mr. Perkins' certification and ordered Mr. Perkins to pay a total civil penalty of \$6,000. Case Nos. AP-08-40235, AP-09-43457, and AP-09-42316

### **MORTGAGE**

CITYWIDE HOME LOANS, mortgage entity, Salt Lake City, Utah. In a September 8, 2014 order, the Mortgage Commission and the Division found that Citywide Home Loans (Citywide) provided dinner and gifts to a number of persons for the referral of business in violation of Utah Code Section 61-2c-301(1)(a). Citywide was ordered to pay a civil penalty of \$6,000. Case No. MG-13-67162

CURTIS, RICK, mortgage loan originator, Woods Cross, Utah. In a June 4, 2015 order, Mr. Curtis's license was granted and placed on probation until he has formalized plans to satisfy several tax liens. Case No. MG-15-77003

HARDY, AARON D., lending manager, Draper, Utah. In a July 6, 2015 order, Mr. Hardy's application to renew his license was denied for criminal history. Mr. Hardy may not apply for re-licensure until three years after his conviction in the criminal matter. Case No. MG-15-74600

HOGAN, JAMES DAVID, mortgage loan originator, St. George, Utah. In a June 25, 2015 order, Mr. Hogan's license was granted and placed on probation until he has formalized plans to satisfy several tax liens. Case No. MG-15-77373

LLAVINA, JOSE LUIS, lending manager, Draper, Utah. In a stipulated order dated August 5, 2015, Mr. Llavina admitted to having failed to adequately supervise affiliated staff and a loan originator in violation of Utah Code Section 61-2c-301 and having failed to maintain records and a quality control plan in violation of Utah Administrative Code Section R162-2c-301 and 301a. Mr. Llavina was ordered to pay a civil penalty of \$8,000 and

to update his MU4 disclosure. Case No. MG-14-69873

PETERSON, CALLIE M., mortgage loan originator, Riverton, Utah. In a stipulated order dated August 5, 2015, Ms. Peterson admitted to having drafted letters of explanation for borrowers without their permission in which she pasted signatures cut from other loan documents. In addition, she admitted making alterations to the REPC and to a letter from the borrowers CPA. Ms. Peterson submitted the letters and REPC to a lender to induce the lender to extend credit to the borrower. These actions are in violation of Utah Code Section 61-2c-301. Ms. Peterson agreed to the revocation of her license. Case No. MG-15-75039

PLUMB, STEPHANIE DENISE, mortgage loan originator, Citrus Heights, California. In a June 9, 2015 order, Ms. Plumb's license was granted and placed on probation for the initial licensing period due to her criminal history. Case No. MG-15-77045

SYKES, RICHARD GORDON, mortgage loan originator, Provo, Utah. In a June 5, 2015 order, Mr. Sykes's license was granted and placed on probation until he has formalized a plan to satisfy



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certain tax liens and made substantial progress in paying down unpaid civil judgments. Case No. MG-15-77019

TAYLOR, STEVEN L., mortgage loan originator, Draper, Utah. In a July 29, 2015 order, Mr. Taylor's license was granted and placed on probation until he has formalized plans to satisfy certain tax liens. Case No. MG-15-77913

## **REAL ESTATE**

ADAMS, DONALD C., sales agent, Cedar City, Utah. In a July 29, 2015 order, Mr. Adams's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77894

BALDWIN, MICAH, sales agent, Pleasant Grove, Utah. In a June 11, 2015 order, Ms. Baldwin's license was granted and placed on probation for the initial licensing period due to her criminal history and due to unpaid civil judgments. Case number RE-15-77130

BARGAR, SAMUEL D., sales agent, Salt Lake City, Utah. In a June 25, 2015 order, Mr. Bargar's license was granted and placed on probation for one year due to his criminal history. Case number RE-15-77377

BARNES, DALLIN LAYNE, sales agent, South Jordan, Utah. In a July 29, 2015 order, Mr. Barnes's license was denied due to his criminal history. Case number RE-15-77905

BELLO, PAUL JAMES, sales agent, Far West, Utah. In a July 29, 2015 order, Mr. Bello's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77896

BERNSON, CHAZ, J., sales agent, Sandy, Utah. In a July 20, 2015 order, Mr. Bernson's license was granted and immediately suspended until November 30, 2016 and thereafter placed on probation for one year due to his criminal history. Case number RE-15-76613

BOLDEN, WILLIAM E., sales agent, Ogden, Utah. In a June 30, 2015 order, Mr. Bolden's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77447

BOSS, LESLIE, sales agent, Salt Lake City, Utah. In a May 27, 2015 order, Mr. Boss's application for the renewal of his license was denied due to his criminal history. Case number RE-15-76884

BURCH, ALLYSON, sales agent, Sandy, Utah. In a June 10, 2015 order, Ms. Burch's license was granted and placed on probation for the initial licensing period due to her criminal history and due to an unpaid civil judgment. Case number RE-15-77106

BUSH, ARI, sales agent, Salt Lake City, Utah. In an August 4, 2015 order, Mr. Bush's license was



Kay R. Ashton

The Division is excited to welcome Kay Ashton to our Mortgage Commission!

Kay served on the Real Estate Commission from June 2006 to November 2014 and has been working in the real estate and mortgage industries for over 30 years.

We look forward to continue working with Kay on our Commission and receiving his guidance and expertise.

Welcome Kay!

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granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77971

CHRISTENSEN, JEFFREY L., sales agent, West Point, Utah. In a July 23, 2015 order, Mr. Christensen's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77851

GIBBS, NEIL, associate broker, St. George, Utah. In a June 19, 2015 order, Mr. Gibbs's license was granted and placed on probation for the initial licensing period due to his criminal history and several civil judgments which have not been satisfied. Case number RE-15-76634

GUNN, STEPHANIE, sales agent, Franklin, Idaho. In a June 4, 2015 order, Ms. Gunn's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-76996

HOLMES, TYSON STEVE, sales agent, Holladay, Utah. In a June 10, 2015 order, Mr. Holmes's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77075

INGOLD, MERIDETH, sales agent, Logan, Utah. In a June 10, 2015 order, Ms. Ingold's license was granted and placed on probation for the initial licensing period

due to her criminal history and due to unpaid civil judgments. Case number RE-15-77102

JOHNS, DEVIN, sales agent, Layton, Utah. In an August 7, 2015 order, Mr. Johns's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-78051

KOPAUNIK, STEPHEN, sales agent, West Jordan, Utah. In a July 22, 2015 order, Mr. Kopaunik's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77831

KURSCHNER, STEVEN ROBERT, sales agent, Syracuse, Utah. In an August 4, 2015 order, Mr. Kurschner's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77980

LAMBSON, JENNIFER, sales agent, Sandy, Utah. In a July 22, 2015 order, Ms. Lambson's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-77824

LEJON, SAN V., principal broker, Salt Lake City, Utah. In a July 22, 2015 order, Mr. Lejon's license was renewed and placed on probation for the renewal period due to his criminal history. Case number RE-15-77814

MAGNESEN, STEVEN T., Salesagent, St. George, Utah. In a stipulated order dated August 19, 2015, Mr. Magnesen admitted to having pled guilty to two felony charges and two misdemeanor charges in case number 151500591 (Fifth District Court, Washington County, Utah) in violation of Utah Code Section 61-2f-401(10). Mr. Magnesen agreed to the revocation of his license. Case number RE-15-76361

MANGUM, BRYANT, sales agent, Taylorsville, Utah. In an August 7, 2015 order, Mr. Mangum's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-78075

MCKEE, ARLO R., principal broker, Ogden, Utah. In a July 7, 2015 order, Mr. McKee's license was renewed and immediately suspended until December 21, 2016 and thereafter placed on probation for the remainder of the renewal period due to his criminal history. Case number RE-15-77528

MELLOR, LESLIE A., sales agent, Holladay, Utah. In an August 7, 2015 order, Ms. Mellor's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-78055

MILITONI, SALES TAIONE, sales agent, Lindon, Utah. In an August 21, 2015 order, Mr. Militoni's license was granted and



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placed on probation for the initial licensing period due to his criminal history. Case number RE-15-78280

OSSANA, MILES C., sales agent, Salt Lake City, Utah. In a July 23, 2015 order, Mr. Ossana's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-77843

PRAGGASTIS, CHRISTOPHER LEE, sales agent, Salt Lake City, Utah. In a June 9, 2015 order, Mr. Praggastis's license was renewed and placed on probation for the renewal period due to his criminal history. Case number RE-15-77054

RANDAL, SARAH JEAN, sales agent, Salt Lake City, Utah. In a June 25, 2015 order, Ms. Randal's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-77379

RICHES, SHANNA NICOLE, sales agent, West Valley City, Utah. In an August 6, 2015 order, Ms. Riches's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-78048

RINCK, CAYLAN JAMES, sales agent, Park City, Utah. In a July 29, 2015 order, Mr. Rinck's license was granted and placed on probation for the initial licensing period

due to his criminal history. Case number RE-15-77911

ROBINSON, ASHLEIGH KATE, sales agent, Salt Lake City, Utah. In a June 11, 2015 order, Ms. Robinson's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-77125

RUTHERFORD, DANNY L., sales agent, Herriman, Utah. In an August 17, 2015 order, Mr. Rutherford's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-78206

SATTERFIELD, STERLING MICHAEL, sales agent, Draper, Utah. In an August 17, 2015 order, Mr. Satterfield's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-78182

STOOKEY, STEVEN LINCOLN, sales agent, Saratoga Springs, Utah. In an August 18, 2015 order, Mr. Stookey's license was granted and placed on probation for the initial licensing period due to his criminal history and due to a previous sanction of his mortgage license in another state. Case number RE-15-78220

SWABY, NIGEL, sales agent, Salt Lake City, Utah. In an August 14, 2015 order, Mr. Swaby's license was granted and placed on proba-

tion for the initial licensing period due to his criminal history. Case number RE-15-78181

THOMPSON, MICAH, sales agent, Ivins, Utah. In a July 7, 2015 order, Ms. Thompson's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-77538

TIMMONS, SPENCER J., sales agent, Salt Lake City, Utah. In an August 11, 2015, order, Mr. Timmons's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-78076

WEBSTER, KARI S., sales agent, Syracuse, Utah. In a June 10, 2015 order, Ms. Webster's license was renewed and placed on probation for the renewal period due to her criminal history. Case number RE-15-77101

WILLIAMS, SCOTT L., sales agent, Salt Lake City, Utah. In a July 21, 2015 order, Mr. Williams's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76488

ZAHM, CHRISTINA, sales agent, Sandy, Utah. In a July 9, 2015 order, Ms. Zahm's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-77589



## Kagie's Korner Earnest Money Receipt:

### How and Why Confirmation of Earnest Money is Important

When a buyer's agent is representing his or her client and prepares a Real Estate Purchase Contract (REPC), the client has a choice to make with regard to the earnest money. The REPC provides a couple of options. The buyer can: 1) deliver the earnest money to the buyer's brokerage with the REPC; or 2) agree to deliver the earnest money to the buyer's brokerage within four days after acceptance of the REPC. Regardless of the option selected, the buyer's agent must determine how to document receipt of the earnest money.

If the buyer elects option one, the first section of the REPC should be used as a receipt to document that the earnest money was received by the buyer's agent. If the buyer elects option two, the proper way to document receipt of the earnest money is also for the buyer's agent to sign the first section of the REPC. However, with option 2, the buyer's agent should only sign the receipt after receiving the earnest money from the buyer (which should be within four days after acceptance of the REPC by the seller). If a party other than the buyer's brokerage is to hold the earnest money, this circumstance should be addressed in an addendum to the REPC.

If an addendum is used, the addendum should indicate which title company is holding the funds and when the deposit should occur. For example the addendum should not read, "Earnest money to be deposited at buyer's title company." This language is too broad. Both the buyer and seller need to know which title company will be holding the funds, and the agents involved should ensure that their clients are protected by noting in the addendum where the earnest money will be held and who will hold the funds in trust. An example of addendum language might be "Earnest money will be deposited with ABC Title Company as per the deadline stated in the OFFER TO PURCHASE AND EARNEST MONEY DEPOSIT on Page 1 of the REPC." When the language is clear, both the buyer and seller have agreed to which title company will be holding the earnest money and when the money will be deposited for their transaction. Clarity in the REPC and Addenda will help to alleviate possible litigation.

When properly documented in an addendum, earnest money may be deposited with a title company or other authorized escrow company, as per the following administrative rule:

R-162-2f-401c (1) A principal broker shall:

(i)(i) except as provided in this Subsection (1)(i)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity.

In addition to the language in the REPC confirming receipt of earnest money, use of either the Utah Association of Realtor's Confirmation of Receipt of Earnest Money Form, or a form drafted by your broker's attorney addressing receipt of the earnest money, would be a beneficial additional step to demonstrate to all parties that earnest monies have been received.

Both the listing and selling agents have a fiduciary duty to their clients to ensure the earnest money is deposited as directed and in accordance with the terms of the REPC.



# Division of Real Estate



## Questions...Questions...Questions

The Division recently received the following question:

“In some of the more rural towns in southern Utah, brokers seem to think that they have the right to hold agents “hostage” and not sign a licensee’s change cards or complete a change affiliation request in RELMS when requested to do so. I have seen it happen over and over again in the past 12 years, 3 times for myself. I am very thankful that this is incorrect and that these “Bully Brokers” do not own us or our license. I would love to see an article in the newsletter telling agents that they have the right to change brokerages and not to be bullied by mean brokers.”

This is a fascinating question and we appreciate the opportunity to clarify this matter.

When a sales agent or associate broker desires to inactivate their license, or to change company affiliations, the sales agent or associate broker has two methods to accomplish their request through their personal RELMS account:

The first method is for the sales agent or associate broker to submit a change request in RELMS. There is no fee associated with inactivating a license or changing affiliations. If inactivation is requested, the current broker is notified by e-mail of your request to inactivate your license. The broker has ten days to electronically acknowledge your request in his or her RELMS account. When the broker acknowledges your request (if within ten days), your license status will change to inactive on the following business day.

If the current broker fails to acknowledge your inactivation request within ten days, your inactivation request has failed<sup>1</sup>.

If the sales agent or associate broker desires to change brokerage affiliations they need to submit a change affiliation request in their RELMS account. In this instance, the current broker and the pending new broker are both sent an electronic notification of your request. The current broker must acknowledge your desire to change affiliations, and the pending new broker must accept your request to join their company, **within ten days**. If either broker fails to electronically acknowledge or accept the request within ten days, the desired affiliation change request fails<sup>1</sup>.

<sup>1</sup> If an inactivation request or affiliation request fails, the sales agent or associate broker **must first cancel the inactivation request and/or affiliation request in their RELMS account, and then submit another change request in the RELMS system.**

Once again both brokers must electronically acknowledge/accept within ten days or this second request will fail. This process must be continued by the initiating licensee until BOTH the current broker AND the pending new broker have acknowledged and accepted within ten days.

The second method does not require either broker’s acknowledgement or acceptance. The process for the second method is for the sales agent or associ-

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ate broker desiring to inactive their license, or to be removed from a company affiliation, to send a letter by certified mail to their current broker at their last known address. Then in their personal RELMS account, enter the Certified Mail Return Receipt Number and click "Record Acknowledgment." The Division will make the requested change as of the date electronically received by the Division.

With the availability of both these methods to either inactive or change company affiliations there is no

reason for any licensee to feel as though they are being "held hostage" by a "bully broker." Real estate licensees have every reason to make these important decisions without feeling as though they are constrained to remain, and/or have no remedy to inactive or terminate their working relationship with their real estate broker. No laughing matter, please, no more mean bully brokers.

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## Sitting On A Question You've Been Meaning To Ask? ....

### WE'LL FIX IT!

Send an email with your  
questions to:

**[drenewsletter@utah.gov](mailto:drenewsletter@utah.gov)**

You can also reach the  
Division of Real Estate at  
801-530-6747





# Division of Real Estate

## Utah Division of Real Estate 2015 IDW Instructor Development Workshop

October 14 & 15 • Park City Marriott

This year our speaker will be career educator, Deborah Long. Since 1994, Deborah has traveled around the United States, sharing her research, expertise, and provocative insights with real estate professionals, home inspectors, surveyors, engineers, and basically anyone who will listen. A career educator, Deborah has been certified as an ethics trainer by the Josephson Institute of Ethics and earned her doctorate in adult education. Her research on the effect of ethics instruction on Florida real estate agents created a firestorm of controversy and interest. Deborah was recognized as North Carolina's Real Estate Educator of the Year by the NC Real Estate Educators Association, and her ethics courses have achieved national recognition.



Deborah Long

Deborah is the author of more than 20 real estate textbooks, including *Doing the Right Thing: A Real Estate Practitioner's Guide to Ethical Decision Making*, which is in its 4th edition. Deborah currently resides in Chapel Hill, North Carolina, a town famous for

its rabid love of sports, The University of North Carolina, Michael Jordan, and BBQ pork.

Division representatives will present current industry information and changes during the morning session October 14th

October 14	\$50
October 15	\$50
Both days	\$75

Click to download the

[\*\*REGISTRATION FORM\*\*](#)

NOTE: Attendance at the two-day IDW is required once every two years for all real estate, mortgage, and appraiser pre-licensing instructors. Mortgage and appraisal instructors are invited to attend this course although no CE credit can be given. Only **Real Estate instructors (pre-license and continuing education)** as well as attending real estate licensees, will receive 13 hours of core continuing education credit for attendance at this outstanding training event. Please keep in mind that CE credits are only awarded in full-day segments.



## Division Document Request: What Not to Do

The Division has a few cases under review where additional violations may be pursued above and beyond the initial allegations because of how agents and/or brokers have handled document requests. It has to do with how they answer the following question:

“The Division is asking me for a copy of my brokerage file or records. While copying and reviewing the file, I noticed a document is not present (e.g. listing agreement). What should I do in this situation?”

A licensee in this situation has a few options:

1. An agent/broker can check with each other to see if the other party has a copy.
2. Team members can check with one another.
3. Depending on who would have needed the document, such as title, a licensee can possibly acquire it from them.
4. A licensee can even check with the client to see if the client has a copy.

But there is definitely a wrong answer to this situation. That is recreating the document. This

means having parties resign the document and back-dating the document to when it should have been done to be in compliance. This could also mean to place a person’s signature on the document after the fact. This can include any number of things to create a version of the document which was not either created or executed during the time of the transaction in question.

If the Division asks for a copy of the file, and documents may be missing, do not try to recreate them. The Division would call that a fabricated document, and will look to take serious action in these matters. If a licensee just does not have the document in question, be honest about it. We can deal with that situation, and it probably will not be as serious of a situation as if you create a document and try to pass it off as an original copy to the Division for review.

If you have questions about how to handle this type of situation, speak with an attorney or with the Division staff member making the request. The last thing the Division wants to do is add additional, serious violations against a licensee because they tried to be dishonest about maintaining a copy of any given document.



**Lark Martinez**  
Mortgage  
Education Coordinator

Lark Martinez has joined the Division as the new Mortgage Education Coordinator! She deals with NMLS, licensing and education. Lark has been working in the Mortgage industry for 15 years and spent 5 of those years serving as a Principal Lending Manager. In the short time that Lark has been with the Division her knowledge and experience has provided a great value to our Mortgage team.

Outside of work Lark enjoys road biking as well as taking motorcycle road trips with her husband. Lark also enjoys spending time with her two sons, two chihuahuas.

Lark is extremely driven and efficient at what she does. We are excited to have Lark as part of our work family!



## Auctions: Going Once, Going Twice, Changes May Be Coming

Recently the Division received a communication in which concerns were expressed about real estate auction companies. Specific concerns regarding how unlicensed auction companies or auctioneers participate in a transaction have been raised. Based on those concerns, the Division wanted to provide our licensees with some clarifying information.

According to Utah Code Annotated § 61-2f-102(18), which defines Principal Broker (and, consequently, draws the line when a license is required), a license is required for two relevant activities related to auctions. A license is required for a person who:

- 1.) buys, exchanges, or auctions real estate...with the expectation of receiving valuable consideration; or
- 2.) sells or lists for sale real estate...with the expectation of receiving valuable consideration.

In order for a property to be auctioned or advertised, a licensed broker must be directly involved. The statutes do not further discuss how auctions occur, but current rules under R162-2f-401i do address the issue.

At this time, there are a couple of things to take away from the statutes and rules. First, an auction company or auctioneer must be licensed in order to market or advertise the property. Second, if the auction company or auctioneer is not licensed, they must contract or affiliate with a licensed principal broker<sup>1</sup> to conduct an auction.

For our licensed brokers, if you contract with an auction company or auctioneer to conduct an auction, you are responsible to ensure the auction is compliant with the Divisions rules. This does not

mean you can sit back and let the auction company or auctioneer handle all of the work...you must ensure that all of the elements under the rule are supervised by you, the broker.

With that said, the Division is currently considering a rule change regarding how auctions will occur in the future. Until a rule change occurs, please be aware of your duties as the licensed broker to, according to the auction rules, “ensure that all aspects of the auction comply with the requirements of this section (R162-2f-401i).”

If you are aware of auction companies that are approaching homeowners who are already subject to an agency agreement, advertising Utah properties, or auctioning Utah properties without either being licensed or without being properly affiliated with a principal broker, please notify the Division to file a complaint.

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<sup>1</sup>We have also heard that there are auction companies paying commissions to real estate agents directly. Even if your brokerage does affiliate with an auction company, any compensation must go through the licensee’s broker.

