

Division of Real Estate NEWS

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

Gary R. Herbert, Governor

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FOURTH QUARTER 2010

Mortgage License Renewal Deadline Passes -Two-Month - -Reinstatement Period Begins-

Mortgage licensees who successfully transitioned their licenses in 2010 have just completed the license renewal period (November 1 – December 31, 2010). At the time this article was prepared, 2325 Utah mortgage loan originators (including MLOs, ALMs, PLMs, and BLMs) have submitted a request for license renewal with the NMLS. In addition 582 mortgage entities and mortgage branches have requested license renewal. Division staff are rapidly reviewing these applications to verify that mortgage originating licensees have successfully completed all renewal requirements, including several Utah specific licensing requirements, as follows:

- * 14 hours of continuing education **if initially licensed before** October 1, 2009 (Utah DRE or NMLS CE including 2 hrs of ethics & 3hrs Federal/State laws governing mortgage lending)
- * 8 hours of continuing education **if initially licensed after** October 1, 2009 (Utah DRE or NMLS CE)
- * Passage (or prior certification) of the NMLS Utah state exam
- * Completion and submission of the Social Security Verification Form

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-REMINDER- Paper Change Cards & License Renewal Forms No Longer Accepted

The third quarter Division newsletter announced that paper change card and license renewal forms will no longer be accepted after 2010.

Real estate and appraiser licensees should now use the RELMS system to accomplish the following:

Real estate and appraiser licensees are now able to:

- Update your mailing and physical address
- Change your license status from active to inactive, etc.

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❄️ From the Director's Desk ❄️



Deanna Sabey At the Division of Real Estate, we have been very concerned about loan modification companies that take up-front fees but wind up not providing the agreed-to services. Our mortgage investigators are swamped with calls and complaints from consumers in mortgage trouble. Consumers have paid sometimes \$3,000-\$5,000 in up-front fees without receiving the promised services. The stories are heart-wrenching and disturbing. The owners of these unscrupulous loan modification companies know consumers will not sue them or their companies because the consumers are financially destitute.

Many loan modification companies claim they need consumers' payments up front to cover ongoing costs relating to the services they provide, but that argument fails. Companies start and run their businesses all the time without having to charge the consumer before the service is provided.

On a federal level, the Federal Trade Commission has been dealing with scores of complaints from consumers regarding up-front fees. In a recent FTC action against a loan modification company, the FTC alleged the company gave no services of value to consumers who paid up to \$4,250 each, did not pay promised refunds, and made false promises to consumers. A federal court halted the company's operations, appointed a receiver to manage the business, and froze the company's assets, pending trial. The FTC has gone after dozens of loan modification companies and typically entered into settlements with those companies for millions of dollars. The FTC and state law enforcement agencies have collectively filed over 200 cases against providers of mortgage relief services. The vast majority of those cases were filed against loan modification companies.

On November 19th, the FTC prohibited up-front fees for mortgage relief services through the Mortgage Assistance Relief Services Rule (MARS Rule). The MARS Rule states the consumer can be charged for mortgage assistance relief services (which includes loan modifications and many short sales) only after the consumer and mortgage holder or servicer agree in writing to the offer of mortgage assistance relief.

At least 20 states currently prohibit charging advance fees for mortgage relief services. Utah is not one of those states. In Utah, loan modification companies and foreclosure rescue service providers must be licensed with the Division. But, these companies can charge the consumer an up-front fee after entering into a written contract with the consumer. Given the blatant consumer rip-off in Utah through up-front fees, it is time for Utah to prohibit them.

The 2011 Legislative Session is coming up, beginning the fourth Monday in January. The Division will seek to enact legislation prohibiting loan modification companies and foreclosure rescue companies from charging consumers up-front fees. The importance of protecting consumers, who will likely be your clients at some point, is paramount. Good legislation is the first step. I hope you have a wonderful Holiday season and a prosperous New Year. There is much work ahead of us.





LOAN MODIFICATION SCAMS

The financial woes of the whole nation have proven that these are unusual and trying times in our real estate-related industries. In

times such as these, scammers come out of the woodwork in large numbers to prey upon the citizens of our state. In the past several newsletters from the Division of Real Estate, we have discussed real estate purchase scams, short sale scams, and foreclosure rescue scams. Now we would like to bring into focus another very prevalent scam in Utah—the loan modification scam.

First, we must acknowledge that not all loan modifications are scams, and not all loan modification companies are scammers. There is a very valid purpose for loan modifications in our current marketplace. Loan originators licensed in Utah can provide a very valuable function in assisting consumers with loan modifications, and in general are doing an excellent service in the communities.

Loan modification scams come in many forms. The most common and easiest to accomplish involves taking a sizeable up-front fee, anywhere from \$700 to \$7,000, and then never providing any services to the consumer. This is an over-simplification of the process but also a very accurate description of the many complaints the Division of Real Estate receives on a regular basis.

The homeowners are generally facing some kind hardship, or even distress, in their financial positions. There is a need to have some financial relief, and mortgage payments are usually the largest single obligation of a person or family. These scammers advertise that they will guarantee results, or promise results that they can not deliver. The pitch from the scammers is often too good to be true, and we know what they say: "If something sounds too good to be true, it probably is too good to be true." Many times the scammer already knows that the consumer is desperate, and therefore tailors a presentation to appeal to that desperation.

The scammer tells the consumer that he or she, the consumer, will not have to make a house payment until the newly modified loan is in place and that the unpaid house payment money will help the consumer pay the up-front fee to the scammer. It sounds good, but it doesn't work out that way. Several months go by and the homeowner/consumer then discovers that there is a notice of default filed on the property. The homeowner has already given money to the scammers and now doesn't have enough to make the current mortgage payment—let alone catch up the delinquent payments.

One prevalent loan modification scam that is occurring now involves advertising a phony government bailout program. This generally happens after a notice of default has been filed. These scammers buy lists of default notices recorded in each county. The scammers then send a letter to the homeowner, giving the impression that the letter comes from an official government agency. The letter claims that the homeowner is entitled to government bailout money—all the homeowner has to do is send a sizeable fee to the address included. These letters are almost always followed up by a phone call to the homeowner to confirm the receipt of the letter and answer questions. This is a percentage game for the scammers; they know that not everyone will fall for the ruse. However, they also know that a certain number of homeowners will swallow the bait. Once the money is received, the homeowner will never hear from the scammer again, and the money is lost.

Another scam common right now is a bait and switch scam. The homeowner is contacted by the scammers and, after answering a few qualifying questions, the homeowner is notified that he or she does not qualify for a loan modification, but could consider some other available alternatives. These "alternatives" range from filing bankruptcy to quitclaiming the homeowner's interest to a third party. The homeowner is assured that the property will not be foreclosed because the scammers will take responsibility for the mortgage. The scammers then turn around and lease option the property, sometimes leasing it back to the original homeowner, and it frequently goes to foreclosure in the end.

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Mortgage License Renewal Deadline Passes -Two-Month - -Reinstatement Period Begins-

Utah DRE staff are reviewing NMLS license renewal



requests in the order they are received. Mortgage licensees **who meet all renewal requirements** will be mailed their 2011 mortgage licenses. **Congratulations to those of you who have successfully completed all mortgage license renewal requirements!**

The licenses of Utah mortgage loan originators who failed to submit a license renewal request to the NMLS, and of MLOs who submitted a renewal request but failed to meet all license renewal requirements, will expire on December 31, 2010. All activities for which a mortgage license is required **must immediately** cease until such time as these individuals become actively licensed.

Transitioned licensees whose licenses expire on December 31, 2010 will, however, have until February 28, 2011 to complete all their licensing renewal requirements and submit a (reinstatement) renewal request to the NMLS. After the reinstatement period (January 1 – February 28, 2011) ends, individuals still desiring a license will need to reapply as new applicants.

Similarly, mortgage licensees who failed to transition their licenses into the NMLS will expire on December 31 **with no opportunity to reinstate**. These individuals will have to reapply as new applicants. Please refer to the Newsletter article (page 15) included in the third quarter Division newsletter which explains this procedure http://www.realestate.utah.gov/newsletters/newsletter_q3-2010.pdf

- • • • •
- Mortgage licensees who met
- the renewal requirements and
- submitted their renewal request
- through NMLS on or before
- December 31, 2010, before 10:00
- p.m. (MST) will have no status
- change on their license going
- into the new year. Only those
- who have not met the licensing
- requirements will then be expired
- and need to meet the requirements
- during the reinstatement period. ❁
- • • • •

Renewal Registration Deadline Passes For “Group A” Trainees

Four hundred ninety-eight appraiser trainees were required to renew their registrations by the December 31, 2010 deadline. As of the date this article was prepared, only **ten** of these “Group A” trainees completed the required re-registration. The 180 trainees who allowed their registrations to expire are now prohibited from performing appraiser assistance that requires registration with the Division. In addition, no experience hours completed by a trainee during a time when the trainee's registration is expired will be counted toward licensure.

Supervising appraisers should confirm that all trainees they are supervising are appropriately registered. Allowing unregistered individuals to render appraisal functions that for which trainee registration is required could result in disciplinary action for both the unregistered trainee and the supervising certified appraiser. ❁

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LOAN MODIFICATION SCAMS

It is obvious that the scammers are very active right now. They have many ways to take advantage of desperate and distressed homeowners in today's real estate market. One of the best things a homeowner can do to protect him or herself from these scammers is to work with a licensed professional. Mortgage and real estate licensees are trained in how to help homeowners who face these very problems.



Here is a list of simple things homeowners can do to protect themselves:

- Make sure that the loan modification company is licensed with the Division of Real Estate. Do not work with any individual or company that is not licensed.
- Talk to your lender or servicer directly. Let your lender know your problems, and discuss ways you might resolve the issues
- Never make your mortgage payment to a third party.
- Do not pay an up-front fee. Do not pay any fees until you receive a written offer from your lender or servicer for modified loan terms.
- Do not stop making your mortgage payments. Doing so will put you closer to foreclosure.
- Do not sign a quit claim deed to another property.
- Do not sign any documents in blank. Make sure you read what you sign.
- If you think you are being scammed, file a complaint with the Division of Real Estate.

For a complete list of loan modification Do's and Don'ts, go to the Division of Real Estate website main page.



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-REMINDER- Paper Change Cards & License Renewal Forms No Longer Accepted

- Change your company affiliation (which requires on-line approval/acknowledgement from the effected Principal Broker(s))
- Manage your company roster (for Brokers)
- Order a duplicate license
- Easily view completed continuing education courses at any point in time since you last renewed your license
- View and order a license history
- Renew your license

Our licensees have now had three years to acquaint themselves with the uses and convenience of RELMS. **Beginning January 1, 2011, real estate and appraiser licensees (excluding appraiser trainees) desiring to make the changes listed above, will exclusively perform them on the on-line RELMS system.**

The Division will no longer accept change cards or license renewal forms (with very limited exceptions) **at the Division.** Only individuals who are **REQUIRED BY THE DIVISION** to provide additional information due to disclosure questions, or who may have a restriction placed on their licenses, will be required to submit paper forms for processing.

Faxing, mailing, e-mailing or hand delivery of renewal forms or change cards will no longer be accepted for processing by the Division (other than from those individuals who have been PREVENTED BY THE DIVISION from completing their license renewal or make changes on RELMS).

By requiring electronic changes and license renewal, the Division can focus its efforts on utilizing its resources in a more meaningful and cost effective manner.



RULE CHANGES SINCE SEPTEMBER 31, 2010

APPRAISAL

On October 9, 2010, the following rule amendments were made effective:

- [R162-101](#): the term "affiliation" is defined.
- [R162-102](#): applicants for licensure or certification must inform the Division if they are affiliated with another appraiser, an appraisal entity, or a government agency. In addition, these individuals must submit a change form to the division whenever they change an affiliation.
- [R162-110](#): applicants for trainee registration must inform the Division of their affiliation and submit change cards whenever those affiliations change.

APPRAISAL MANAGEMENT

On November 10, 2010, [R162-2e](#) was made effective. This new rule incorporates the substantive provisions of rule R162-150, but reorganizes the provisions into a format that reflects the organization of the AMC statute. In addition, several new provisions are in place as follows:

- An AMC must register in the name of the legal entity under which it conducts business and inform the Division of any dbas or trade names being used. But an AMC is not required to register each dba or trade name separately.
- An AMC must have a system in place to verify that each appraiser added to the panel is licensed or certified and that any appraiser contracted to provide an appraisal service remains licensed or certified in good standing. The proposed rule does not mandate how this system must operate.

- An AMC must have a system in place to verify that an assignment is completed by the appraiser or appraisal entity to which it is assigned.
- An AMC must have a system in place to ensure that an assignment offer includes information sufficient to allow the appraiser to determine whether he or she can competently complete the assignment. This information includes property identification, assignment conditions, and scope of work requirements.
- To register, an AMC must have a system in place to track the client on each assignment, as well as the appraiser or appraisal entity that accepts each assignment, and it must provide certain information about the format in which records are kept, how electronic records are backed up, where the records are kept, and the name of the records custodian.

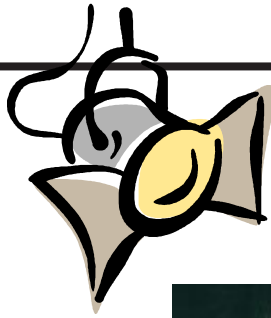
The Appraiser Board is at work drafting a few minor amendments to address concerns that were raised during the public comment period.

MORTGAGE

On October 9, 2010, an amendment to Subsection [R162-2c-204](#) was made effective. This amendment provides that a mortgage loan originator who, within the 2010 calendar year, completes all requirements to obtain a PLM or ALM license may request renewal at the end of this year without completing additional continuing education.

On November 22, 2010, an amendment to Subsection [R162-2c-202](#) was made effective. This amendment outlines the factors that the Division will consider in evaluating the financial responsibility of an applicant for licensure.

- [R162-2c-201](#): A licensee who allows the license to expire and thereafter applies for a new license will not be required to re-take the 20-hour national preclicensing course, but will be required to complete certain



Staff Spotlight

Stuart Engerman Mortgage Investigator



Stuart Engerman was born and raised in Madison WI. He attended the University of Wisconsin – Madison and graduated in 1975 with Bachelor of Arts degrees in Criminal Justice and Anthropology. In

1975 Mr. Engerman moved to Seattle WA and worked in that area as an Adult Probation/Parole officer until 1978. He returned to Madison and was employed as an Investigator with the Wisconsin Department of Regulation Licensing from 1978 through 1987. From 1987 through 2003 he continued to work for the Department as Investigative Staff Supervisor with direct responsibility for managing 26 Investigators and Inspectors. He also served as an Advisor to the State Controlled Substances Board and the Medical Examining Board. He was a member of the Governor's Committee on Medical Malpractice and Chair of the National Subcommittee on Discipline of the national Council on Licensing Enforcement and Regulation (CLEAR).

In 2004 Mr. Engerman started his own private detective company in Madison, 20/20 Investigations. At that time he also began working as the Chief Investigator for Martin Security and Investigations in Madison. In February 2008 he relocated to Salt Lake City, where he began working as a Fraud Investigator for the Department of Commerce, Division of Consumer Protection. In August 2010 he transferred to a similar position in the Division of Real Estate, where he is assigned to investigate complaints concerning mortgage licensees.

Mr. Engerman enjoys reading, hiking, photography and travel. He has 2 sons: Michael, a recent graduate of the University of Wisconsin College of Engineering, and Stephen, a Junior at the University of Wisconsin.

continuing education. All individual applying for licensure shall complete, sign, and submit to the Division a social security verification form. Mortgage entities are prohibited from operating under a business name that closely resembles the name of another licensed entity or that is otherwise confusing or misleading.

- R162-2c-203: An individual whose license expires on December 31, 2010 will have the option of completing Division-approved continuing education courses in order to reinstate the license by the February 28, 2010 deadline, according to certain restrictions imposed by the nationwide database.
- R162-2c-204: An individual who completed prelicensing education and obtains the associated license within a calendar year is not required to complete additional continuing education to renew the license in the same calendar year.

REAL ESTATE

On December 22, 2010, a new rule, [R162-2f](#), was made effective, and rules R162-1 through 11 were repealed. The new section 2f reorganizes and renumbers the old rules into a statutory format that should be much easier to use. To view the full text of the rule, [click here](#).

TIMESHARE

On November 8, 2010, rule [R162-57a](#) was made effective. This new rule provides definitions and codifies the Division's policies governing the registration of timeshare projects and salespersons, advertising of interests, required disclosures, and unprofessional conduct.



Fourth Quarter 2010

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.

KILPATRICK, JOHN A., Certified General Appraiser applicant, Seattle, WA. In a November 15, 2010 order, resolution of application delayed until a final determination is made by the Washington Department of Licensing as to a complaint filed in that jurisdiction against Mr. Kilpatrick. The complaint alleges that Mr. Kilpatrick completed an appraisal report in which he failed to support his opinions, overstated the contributory value of land, and failed to report comparable sales. The Division is authorized to issue Mr. Kilpatrick a six-month temporary permit while the Washington investigation is resolved. Case number AP-10-52423.

THOMPSON, BRAD, Certified General Appraiser applicant, Salem, OR. In a September 24, 2010 order, resolution of application delayed until Mr. Thompson resolves an investigation by the Oregon Appraiser Board into allegations that his appraisal of certain vacant land contains multiple violation of USPAP, as well as violations of the Oregon statutes and rules governing the appraisal industry. The Division is authorized to issue Mr. Thompson a six-month temporary permit while the Oregon investigation is resolved. Case number AP-10-51743.

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LEGAL CORNER



PROTECTION OF PERSONAL INFORMATION

No one wants their personal information made available for illegal purposes. In Utah, the Protection of Personal Information Act exists to help protect consumers' information from misuse. This statute (Utah Code Ann. §13-44-101 et. seq.) applies to any person who conducts business and maintains the personal information of a consumer. The scope of the Act includes every person licensed with the Division.

If you collect consumers' personal information, you must implement and maintain procedures to prevent the unlawful use or disclosure of that information. When you no longer need the information, you must destroy it by shredding or erasing it or making it otherwise indecipherable.

Personal information is defined as a person's first name or first initial and last name, combined with a: 1) social security number, 2) driver license number, 3) state identification card number, 3) financial account number, 4) credit card number, or 5) debit card number.

If you keep personal information in a computerized format and your system security is breached, you must give each affected person notice of the breach. The notice requirement is triggered when there is a reasonable likelihood that the personal information will be or has been used for identity theft or for a fraudulent purpose.

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Kagie's Korner

Are you creating an advertisement violation when you place an ad?



In the past few months the Division of Real Estate has seen a sharp increase in the number of complaints that revolve around advertisements run in various advertising media by real estate agents. Administrative rule [R 162-2f-401h\(1\)](#) requires

use of the brokerage name in all advertising materials, including newspaper, magazine, Internet, e-mail, radio, television advertising, direct mail promotions, business cards, door hangers, and signs.

May times agents feel that their advertisements do contain the required brokerage information when, in fact, this essential information is left out of the advertisement for different reasons. Here are the most common explanations the Division has heard for the omission of the required brokerage information.

Mr. Forgetful, in using an online classified provider, fails to click a box indicating he is an agent. He then types in the body of the ad without realizing that he neglected to include his brokerage information. He then clicks to post the ad. Presto! A blind ad is created and instantly published. Mr. Forgetful goes on about his business, never taking a look at the advertisement and never proofing the final product.

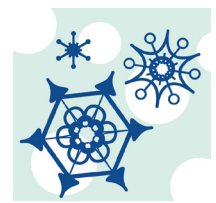
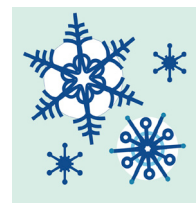
Mr. Busy calls his office staff and tells them to quickly run an advertisement in a local magazine. The deadline for the ad is in one hour. The agent never sees or proofs the advertisement, and the personal assistant who prepared the ad is in a hurry to get the ad to the publisher in order to beat the deadline.

The brokerage information did not make it into the finalized ad copy. A blind ad is created and published.

Mr. Seller, who is also a sales agent, lists his home with his brokerage (and subsequently places the listing into the MLS). He then places a "For Sale by Owner Agent" sign on the property. The placement of this sign on a listed property violates Division advertising rules and a blind ad is created. Any agent who owns property and lists it on the MLS has to advertise the property through the brokerage. If an owner/agent does not list the property, the owner/agent is required to have the term Owner Agent/Broker on all advertisements.

Mr. Good sight has a website in which he has his team name on the top of the website. The font size of the text is twenty-point, while at the bottom of the page the font size of the brokerage is three-point. Mr. Good sight has violated the advertising rule that requires that the name of the brokerage be at least one half the font of the advertisement. This constitutes a violation of Division advertising rules.

The best way to make sure an advertisement does not violate the rules is to PROOF, PROOF, and PROOF the advertisement. The Division is taking this time to inform all real estate agents to go over advertising rule R162-2f-401(h) to make sure that all ads comply with the rules. Individuals whose advertisements violate the rules may face disciplinary action on their licenses. Most violations occur because licensees fail to proof their advertisements.



Mortgage Loan Entity Quarterly Call Reporting Requirement

The SAFE Act mandates the submission of a report of condition of licensees. The new NMLS mortgage call report (MCR) is designed and intended to fulfill that requirement. The SAFE Act states that the report shall be in such form and contain such information as the NMLS may require.

All states are required to ensure that the origination activities of all mortgage loan originators are reflected in MCRs submitted to the NMLS.

All mortgage entities (including DBAs and mortgage branches) shall submit on behalf of all mortgage loan originators an MCR on a quarterly basis beginning the first quarter of 2011, for 2011 mortgage loans. This report shall reflect all loan origination activity of a company's mortgage loan originators. Mortgage entities must complete the financial condition section of the MCR on an annual basis.

In addition, mortgage entities that are Fannie Mae, Freddie Mac, or Ginnie Mae approved servicer/sellers must complete an expanded mortgage call report quarterly. The NMLS expanded mortgage call report primarily consists of information collected on the mortgage bankers' financial reporting form (MBFRF). Mortgage entities that complete the NMLS *expanded* mortgage call report are not required to submit the financial condition section of the NMLS *standard* mortgage call report.

The activity information submitted on the MCR must reflect the complete residential mortgage activity of the mortgage entity by state. The MCR is required to include all data for all loan originators affiliated with the entity.

Terms and instructions used in the NMLS MCR are also used in HMDA or MBFRF reporting and will utilize the same definitions to the greatest extent possible.

NMLS MCR information is to be reflective of the quarter specified in the report and is not cumulative. The report is due to NMLS within 45 days of the end of the quarter.

The financial condition report of the standard MCR is due to NMLS annually within 90 days from an entity's fiscal year end.

In subsequent newsletters, the Utah DRE will provide additional information on MCRs as it becomes available.



Credit Report Evaluation of Mortgage Loan Originators

The SAFE Act requires mortgage loan originators to meet certain financial responsibility standards. This legislation specifies that "...the applicant [must demonstrate] financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly and efficiently".

The Utah DRE has an administrative rule that further defines the financial responsibility standards for mortgage loan originators:

R162-2c-202 (3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

- (a) access the credit information available through the NMLS of:
 - (i) an applicant for initial licensure, beginning October 18, 2010; and
 - (ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and

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LEGAL CORNER PROTECTION OF PERSONAL INFORMATION

- (b) give particular consideration to:
- (i) outstanding civil judgments;
 - (ii) outstanding tax liens;
 - (iii) foreclosures;
 - (iv) multiple social security numbers attached to the individual's name;
 - (v) child support arrearages; and
 - (vi) bankruptcies.

The SAFE Act requires that credit reports for loan originators be "pulled." The Utah DRE will be looking only at flagged information contained within the credit report consistent with requirements of the SAFE Act and the administrative rule stated above.

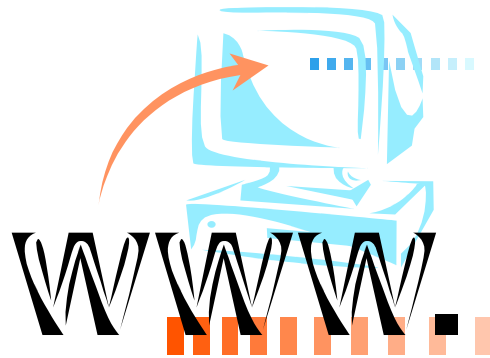
For best practices, the Division recommends that you:

- know what personal information you have;
- keep only what you need;
- properly dispose of information you do not need;
- secure the information you keep; and
- have a written plan you follow for handling personal information.

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 legal counsel and should not be used as such. You should contact your attorney to obtain advice with respect to any particular issue or problem.



The Division will be judiciously evaluating credit information and will make licensing decisions based upon the totality of an MLO's overall financial responsibility rather than merely looking to see if any such deficiencies appear in the report.



Division Website Revamped

The last time you visited the Division's website, you were probably surprised to see some interesting changes. In an attempt to make the website more user friendly, the Division evaluated phone calls coming into our office to determine what questions licensees and the general public often ask.

The revisions to our site include notices of upcoming events on the main menu. Specific licensing types now feature color-coded boxes with commonly sought information to allow easy use. The real estate license management system (RELMS) and CE search engine buttons are both prominently displayed on the real estate, mortgage and appraisal pages.

Check out the recent revisions to the website at <http://realestate.utah.gov/>. Suggestions or comments regarding our website should be e-mailed to realestate@utah.gov



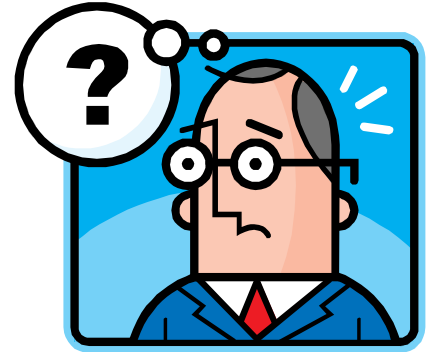
QUIZ YOURSELF

What is a Branch?

All right, smarty pants.

Let's see if you can answer the following questions correctly.

The answers are on the next page.

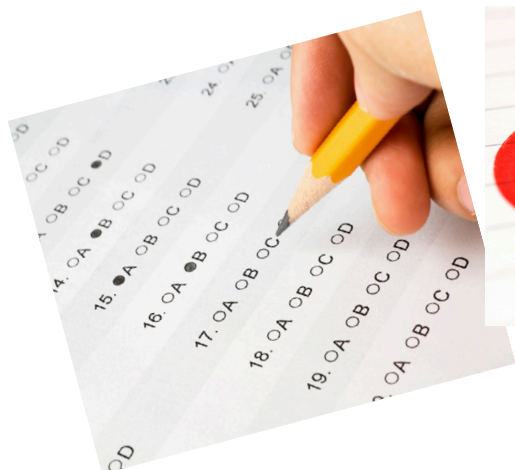


1. Your entity leases an entire floor in an office building. A few licensees propose to use a couple of empty rooms to run an operation specializing in foreclosure rescue (loan modification or short sale). They will operate under a different name from the entity. Do you need to obtain a license for a branch office?
2. Same scenario as above, except that the licensees want to operate under the same name as the entity. Do you need to obtain a license for a branch office?
3. Your entity leases a storage facility where closed files are secured for the retention period mandated by statute. Because business is booming, you decide to bring on two or three new licensees and have them work temporarily from the storage facility—just until you can rearrange your offices to squeeze in a few more cubicles. Do you need to license the storage facility as a branch office?
4. You've outgrown your current office space, and you learn that a small office just across the street is available for lease. You want to have a couple of licensees work there under the same name as the entity. They'll have computers and telephones there, but they will need to come back to the main office and use the conference room to meet with clients. Do you need to license the new space as a branch office?
5. A client whose transaction closed a few years ago calls to request a copy of some documents from the file. You offer to take them to his home. While you are there, he asks you to represent him in a new transaction. You agree, and give him some paperwork, which he signs on the spot. Could you be disciplined for conducting business from an unlicensed location?
6. You decide to focus some marketing efforts in a somewhat distant, remote county. You bring on some licensees who live in the area, and who are willing to go to people's homes to drop off and pick up paperwork, and even to conduct closings. You own a condo there, which you use for an occasional vacation, and there is an empty room where you could store closed files and install a copy machine and scanner for these licensees to use as needed. You would prefer not to go to the expense and trouble of leasing an office and licensing it as a branch. Is this admissible?
7. You enter into an agreement with a developer to assign one of your licensees to work from an office located within the development and answer any questions that people might have after they tour the model homes. Does this office need to be licensed as a branch?



ANSWERS:

1. This is a trick question. Technically, the answer is no. Because this operation does not have a separate address, it is not a branch office. However, it is a dba. In mortgage, a dba must be registered in the NMLS as another trade name. In real estate, each dba must have a separate license.
2. No. It's the same street address and the same name. No need for a branch office license in this case.
3. No, at least as long as the licensees working from the storage facility don't print that address on their business cards or receive mail or meet clients there. However, the moment you advertise that you are conducting business from that address—or the moment a licensee has a client go to that address for a meeting—you need a branch office license.
4. Where these licensees will be working at the satellite location long-term, you need to get a branch office license. The reality is that you are conducting business at that location, and the rules require you to license any location from which you conduct business.
5. No. You can go to your clients to drop off or pick up documents, or even to get signatures, without violating any rules. However, when you have your clients come to you, the location where you meet needs to be properly licensed or registered with the DRE.
6. No. The address from which these licensees conduct business must be licensed. If they are working from your vacation home, you need to license it as a branch office.
7. The answer to this question depends on which industry you are in. If you are a principal lending manager (mortgage), the answer is yes. Get a branch office license. If you are a principal broker (real estate), the answer is no—at least for a while. You can operate from the model home for up to one year; thereafter, you need a license for that location.



Guide to Topics Addressed in the Division's 2010 Newsletters

Advertising Restrictions

- June, page 11 (Kagie's Korner)

Appraiser Segmented Application Information and Deadlines

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- June, page 10
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Appraiser Trainee Re-registration Requirements

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- September, page 9

Caravan 2010

- June, page 9

Federal Regulation of Real Estate Industries

- September, page 2 (Director's Desk)

Foreclosure Rescue: Loan Modification and Short Sale

- March, page 2 (Director's Desk)
- June, page 7 (Short sale scams)
- September, page 13 (Foreclosure rescue scams)

Informal Hearings

- September, page 6 (What to expect at a hearing)

Instructor Development Workshop

- September, page 3 (Schedule and preview of topics)

Mortgage Licensees Do Not Qualify as Independent Contractors

- June, page 5

Nationwide Mortgage Licensing System

- March, page 1 (Failure to transition by May 31, 2010 might complicate renewal)
- March, page 6 (Division cannot accept paper change cards after May 15, 2010)
- March, page 12 (BLM must be appointed to branch office by time of renewal)
- March, page 16 (Chart of transition requirements and deadlines)
- June, page 2 (Director's Desk)
- June, page 11 (BLM must be appointed to branch office by time of renewal)
- September, page 4 (Next steps following successful transition)
- September, page 15 (Next steps for licensees who failed to transition)
- September, page 17 (BLM must be appointed to branch office by time of renewal)

DRE Online Services

- June, page 1 (Introduction to DRE's continuing education search engine)
- September, page 1 (Paper change forms and license renewals will not be accepted after January 1, 2011)
- September, page 3 (Appraiser continuing education banking)

Overview of USPAP 2010

- March, page 1

Restrictions Regarding Referral Fees

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Separate Functions of DRE and Professional Trade Organizations

- June, page 1
- September, page 8 (Kagie's Korner)

Using the Division of Administrative Rules Website

- June, page 5
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Fourth Quarter 2010

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.

MORTGAGE

AMERICAN CIB, L.L.C (aka American Credit Information Bureau and American Consumer Information Bureau), unlicensed entity, Bountiful, UT. On November 16, 2010, cease and desist order issued on information and belief that the entity is transacting the business of residential mortgage loans in Utah without a license and in violation of Utah Code. § 61-2c-201 et seq. Case number MG-10-52427.

BROWN, TERRY WAYNE, Associate Lending Manager license, Woodland Hills, UT. In a September 1, 2010 stipulation and order, license revoked. Mr. Brown used his associate lending manager license as an introductory vehicle to have a homeowner invest money with him. These actions led to Mr. Brown being prosecuted and pleading guilty to two charges of securities fraud, both third degree felonies, which disqualifies him for licensure pursuant to Utah Code § 61-2c-203(1). Case number MG-09-44491

CONTRERAS, MARIAG., Mortgage Loan Originator license, Draper, UT. In an October 6, 2010 stipulation and order, Ms. Contreras agreed to pay a civil penalty of \$500. In violation of Utah Code § 61-2c-201, Ms. Contreras allowed her license to expire, but thereafter prepared a loan approval letter in which she identified herself as a loan officer. Case number MG-10-51471.

FORTIFIED FINANCIAL, L.L.C., Mortgage Entity license, Lehi, UT. On November 16, 2010, cease and desist order issued on information and belief that the entity failed to properly maintain and protect mortgage records containing sensitive personal information, in violation of Utah Code § 61-2c-302(2) and Utah Administrative Code § R162-2c-301(3)(a)(ii). Case number MG-10-48919.

HOPKINS, TRACY MARK, Mortgage Loan Originator license, Mayfield, UT. In a September 13, 2010 order following a disciplinary hearing before the Commission, license revoked on a finding that Mr. Hopkins had an ownership interest in Elkridge Financial, a mortgage company that advertised mortgage services after its license was inactivated and, more significantly, lost possession of records containing clients' sensitive personal and financial information, such that the records would have been sold at public auction had the Division not seized them. Case number MG-10-47098.

KLINELL, DREW J., unlicensed individual, Riverton, UT. In a November 3, 2010 stipulation and order, Mr. Klinell agreed to pay a civil penalty of \$1,500. In violation of Utah Code § 61-2c-201, Mr. Klinell took an up-front fee and originated a loan modification without being licensed with the Division. Case number MG-10-49634.

LEBLANC, DARON WILSON, Mortgage Loan Originator applicant, Orem, UT. In a November 8, 2010 order following an application hearing before the Commission, license granted on probation due to a conviction (October 5, 2007) on two counts of misdemeanor securities fraud. Case number MG-10-51828.

MCCLURE, DONALD, Mortgage Loan Originator applicant, Orem, UT. In a November 8, 2010 order following an application hearing before the Commission, license granted on probation and with the restriction that, during the initial licensing period, Mr. McClure shall keep a log of all loans closed during the term of his probationary license. He shall appear before the Commission and present his log for review in order to renew his license. This action taken on consideration of Mr. McClure's having been terminated, on July 14, 2010, from employment as a mortgage loan originator with Bank of America due to circumstances involving alleged violations of the code of ethics applicable to the bank's loan officers. Case number MG-10-51902.

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Disciplinary & Sanctions

WELKER, MICHAEL J., Mortgage Education Instructor and Provider, Midvale, UT. In an October 6, 2010 stipulation and order, Mr. Welker agreed to pay a \$2,000 civil penalty and to have his instructor and provider certifications placed on probation for one year. In violation of Division policy (see Utah Administrative Code § R162-2c-301(5) and (6)), Mr. Welker taught four continuing education courses that had previously expired. Case number MG-10-51265.

WRIGHT & MORRISON, ATTORNEYS AT LAW, unlicensed individuals, Ogden, UT. On October 27, 2010, following an appeal hearing before the Department of Commerce administrative law judge, the Division's May 12, 2010 cease and desist order made permanent on a finding that Mr. Wright and Mr. Morrison have solicited and originated loan modifications without being licensed and without qualifying for an exemption from licensure. Case number MG 49740.

REAL ESTATE

ALLRED, ADAM L., Sales Agent applicant, Salt Lake City, UT. In a September 14, 2010 order following an application hearing before the Commission, license granted on probation due to criminal incidents in 2006 and 2010 involving possession/use of a controlled substance. Case number RE-10-51053.

BOOTH, STANLEY H., Sales Agent license, Layton, UT. In an October 20, 2010 stipulation and order, Mr. Booth agreed to pay a \$1,500 civil penalty and to take a continuing education course on Utah law. In violation of Utah Code § 61-2f-201(1), Mr. Booth completed at least one transaction after allowing his license to expire. Case number RE-10-51372.

BOWEN, STEPHEN, Sales Agent renewal applicant, Park City, UT. In a November 9, 2010 order, license granted on probation for one year from the date of the order due to Mr. Bowen's having entered into a plea in abeyance (April 8, 2010) on a charge of contributing to the delinquency of minors, and compounded by his failure to report his plea in

abeyance to the Division within ten business days as required by statute. Case number RE-10-52390.

BRADSHAW, WENDY J., Sales Agent applicant, Salt Lake City, UT. In a September 20, 2010 order, license granted on probation due to a conviction (June 10, 2010) on charges of driving under the influence and open container/alcohol in vehicle. Case number RE-10-51657.

BRANSCOMBE, GARY, Sales Agent reinstatement applicant, Murray, UT. In an October 18, 2010 order, license granted on probation for one year from the date of the order due to a conviction (December 4, 2008) for impaired driving, and compounded by Mr. Branscombe's failure to report his conviction to the Division within ten business days as required by statute. Case number RE-10-52072.

BROWN, BEN, Sales Agent renewal applicant, Salt Lake City, UT. In a September 30, 2010 order, license granted on probation due to a conviction (September 7, 2010) for impaired driving, and a conviction (November 3, 2008) on charges of equipment obstruct visibility and failure to appear on citation. In addition, Mr. Brown failed to disclose his November 3, 2008 conviction in response to the licensing questionnaire, and he also failed to report it to the Division within ten business days as required by statute. Case number RE-10-51854.

CAMPOS, SAMUEL, Sales Agent applicant, West Jordan, UT. In a September 29, 2010 order, license granted on probation due Mr. Campos's being delinquent in child support and tax obligations. Case number RE-10-51831.

CARTWRIGHT, BRET R., Sales Agent license, Draper, UT. In an October 26, 2010 order following a disciplinary hearing before the Commission, Mr. Cartwright's license placed on probation for a period of two years from the date of the order, and Mr. Cartwright assessed a civil penalty of \$1,000 and ordered to complete three hours of continuing education in ethics and professionalism. These sanctions imposed on a finding that Mr. Cartwright knowingly participated in a transaction where a fraudulent, inflated invoice was used, which actions violate Utah Administrative Code § R162-6.1.1 and Utah Code § 61-2-11(8) (2004), now recodified as § 61-2f-401(6). Case number RE-27546.

Disciplinary & Sanctions

CHRISTIANSEN, CHRISTOPHER, Sales Agent applicant, Kearns, UT. In a November 2, 2010 order, license granted on probation for the initial licensing period due to a conviction (February 10, 2009) for possession of less than one ounce of marijuana. Case number RE-10-52300.

ELLISON, MONTY D., Sales Agent renewal applicant, Layton, UT. In a September 14, 2010 order, license granted on probation for one year due to Mr. Ellison's being convicted on charges of criminal mischief—human health or safety and disorderly conduct after request to stop, and compounded by his failure to report his conviction to the Division within ten business days as required by statute. Case number RE-10-51561.

EMIG, CHARLIE R., Sales Agent renewal applicant, Alpine, UT. In an October 27, 2010 order, license granted on probation for one year from the date of the order due to Mr. Emig's having entered into a plea in abeyance (December 28, 2009) on a charge of assault domestic violence, and compounded by his failure to report his plea in abeyance to the Division within ten business days as required by statute. Case number RE-10-52224.

FULTON, ROBERT C., Sales Agent applicant, Cedar City, UT. In an October 26, 2010 order, license granted on probation until such time as Mr. Fulton provides the Division with evidence that he has satisfied his court-ordered financial obligations to his children and his ex-wife. Case number RE-10-52207.

GLAUSER, MARCO., Sales Agent renewal applicant, Salt Lake City, UT. In a September 30, 2010 order, license granted on probation for one year from the date of the order due to Mr. Glauser's having pleaded guilty during the past term of licensure to an amended charge of driving while impaired, and compounded by his failure to report his plea to the Division within ten business days as required by statute. Case number RE-10-51860.

HARDY, KENNY A., Sales Agent renewal applicant, Laramie, WY. In a September 20, 2010 order following an application hearing before the Commission, license granted on inactive probationary status due to Mr.

Hardy's having previously surrendered an appraiser license while under investigation by the Division. In order to activate or renew his license, Mr. Hardy must provide the Division with proof that he has completed three hours of continuing education in subjects related to loan fraud. Case number RE-10-51044.

HOLBROOK, TYSON K., Principal Broker reinstatement applicant, Sandy, UT. In a September 23, 2010 order following an application hearing before the Commission, license denied on a finding that Mr. Holbrook engaged in unlicensed activity, conducted his business activities in such a manner as to incur a \$72,751.33 debt that he was unable to satisfy, and set up a straw buyer scheme for the acquisition of real property. Case number RE-10-50840.

IORG, VALERIE, Sales Agent license, Salt Lake City, UT. In a November 17, 2010 stipulation and order, Ms. Iorg agreed to pay a \$500 civil penalty and to take a two-hour continuing education class on Utah law. In violation of Utah Code § 61-2f-401(11), Ms. Iorg placed an advertisement without including her brokerage information in the text of the posting. Case number RE-10-51838.

JENSEN, CHRISTIAN C., Branch Broker license, South Ogden, UT. In an October 20, 2010 stipulation and order, Mr. Jensen agreed to pay a \$1,500 civil penalty and to take a two-hour continuing education course on the Real Estate Licensing Management System (RELMS). In violation of Utah Code § 61-2f-401(12), Mr. Jensen failed to adequately supervise an affiliated sales agent who closed at least one transaction after the agent's license expired. Case number RE-10-51361.



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Disciplinary & Sanctions

KIAH, ROBERT M., Principal Broker reinstatement applicant, Boise, ID. In a September 13, 2010 order, license granted on probation for one year from the date of the order due to Mr. Kiah's entering into a plea agreement on a DUI charge, and compounded by his failure to report his plea agreement to the Division within ten business days as required by statute. Case number RE-10-51558.

METHNER, ALISA, Sales Agent license, Salt Lake City, UT. In a September 15, 2010 stipulation and order, Ms. Methner agreed to pay a civil penalty of \$500, to successfully complete a Division-approved continuing education course in Utah law, and to cooperate with the Division in other investigations arising out of the incidents on which the stipulation is based. In violation of Utah Code § 61-2f-305(1), Ms. Methner accepted a servicing fee tendered directly from a lender through a title company, rather than ensuring that the fee was paid through her principal broker. Case number RE-09-47603.

MICHEL, NATHAN, Sales Agent license, Sandy, UT. In a November 17, 2010 stipulation and order, Mr. Michel agreed to pay a \$500 civil penalty and to take a two-hour continuing education course on Utah law. In violation of Utah Code § 61-2f-401(11), Mr. Michel placed an advertisement without including his brokerage information in the text of the posting. Case number RE-10-51845.

MILLER, BRONSON M., Sales Agent reinstatement applicant, Salt Lake City, UT. In a September 14, 2010 order, license granted on probation due to Mr. Bronson's being charged with seven misdemeanor offenses yet to be resolved in court, including failure to stop at command of law, propelling substance/object at officer, possession or use of controlled substance, interfering with legal arrest, and driving under the influence of alcohol/drugs. Case number RE-10-51564.

OLPIN, CHRISTOPHER N., Sales Agent renewal applicant, Midvale, UT. In a September 30, 2010 order, license granted on probation for one year from the date of the order due to a conviction (March 18, 2009) for driving under the influence of alcohol/

drugs, and compounded Mr. Olpin's failure to report his conviction to the Division within ten business days as required by statute. Case number RE-10-51859.

POPE, JAMES RILEY, Sales Agent renewal applicant, Colony, TX. In an October 4, 2010 order, license granted on probation due to a misdemeanor conviction (June 3, 2010) for theft under \$50, and compounded by Mr. Pope's failure to report his conviction to the Division within ten business days as required by statute. Case number RE-10-51861.

REARY, AARON J., Sales Agent license, Lapoint, UT. In a November 17, 2010 stipulation and order, Mr. Reary agreed to pay a \$4,000 civil penalty. In violation of Utah Code § 61-2f-201(1), Mr. Reary completed four transactions after allowing his license to expire. Case number RE-10-51911.

RICHARDS, JOHN D., Education Instructor and Provider, Salt Lake City, UT. In an October 20, 2010 stipulation and order, Mr. Richards agreed to pay a \$4,500 civil penalty, to have his instructor certification placed on probation status for one year, and to attend the Division's 2010 Instructor Development Workshop. In violation of Utah Code § 61-2-11(2007), now recodified as Utah Code § 61-2f-401(13), Mr. Richards taught an expired continuing education course to nine individuals and attempted to give them credit for the course. Case number RE-10-50915.

SCOTHERN, JENNIFER, Sales Agent renewal applicant, Ogden, UT. In a November 1, 2010 order, license granted on probation until such time as Ms. Scothern completes her term of criminal probation. Ms. Scothern pleaded guilty (March 15, 2010) to a charge of impaired driving. Case number RE-10-52259.

SMITH, KRISTIE L., Sales Agent applicant, Sandy, UT. In an October 27, 2010 order, license granted on probation due to numerous court cases (spanning the years 2001-2005) in which Ms. Smith was prosecuted for misdemeanor offenses including reckless driving, driving under the influence, child abuse/neglect, intoxication, and various moving violations. Case number RE-10-52228.

Disciplinary & Sanctions

TUCKER, TIM N., Sales Agent license, New Harmony, UT. In an October 27, 2010 stipulation and order, Mr. Tucker agreed to pay a \$500 civil penalty and to take a two-hour continuing education course on Utah law. In violation of Utah Code § 61-2f-401(11), Mr. Tucker placed an advertisement without including his brokerage information in the text of the posting. Case number RE-10-51651.

VAN SICKEL, GALEN, Sales Agent license, St. George, UT. In a September 15, 2010 stipulation and order, Mr. Van Sickel, by and through his attorney Alan D. Boyack, agreed that his sales agent license would be revoked, that he would not apply for a real estate license from the Division in the future, and that he would pay a \$2,500 civil penalty. In violation of Utah Code § 61-2f-401(16) and Utah Administrative Code § R162-6-1-8, Mr. Van Sickel, while working as a house cleaner, engaged in certain acts in his client's home, which acts were considered by the client to be lewd and inappropriate. Case number RE-10-49761.

VAN WAGENEN, BREE, Sales Agent applicant, Sandy, UT. In a September 29, 2010 order, license granted, but immediately suspended for a period of 30 days due to Ms. Van Wagenen's failure to accurately disclose her criminal history involving assault and disorderly conduct in response to the licensing questionnaire. Case number RE-10-51820.

WAGNER, AARON, Sales Agent license, Cedar Hills, UT. In an October 20, 2010 stipulation and order, Mr. Wagner agreed to pay a \$2,500 civil penalty. In violation of Utah Code § 61-2f-201(1), Mr. Wagner completed at least one transaction after allowing his license to expire. Case number RE-10-49519.

WALL, RANDALL C., Branch Broker license, Sandy, UT. In an October 20, 2010 stipulation and order, Mr. Wall agreed to pay a \$2,500 civil penalty. In violation of Utah Code § 61-2f-401(12), Mr. Wall failed to adequately supervise an affiliated sales agent who closed at least one transaction after the agent's license expired. Case number RE-10-49520.

WILSON, J. SCOTT, Principal Broker renewal applicant, Cedar City, UT. In a September 30, 2010 order, license granted on probation until such time as Mr. Wilson successfully completes a plea in abeyance agreement entered into on a charge of child abuse/neglect. Case number RE-10-51864.

TIMESHARE

MULTI-RESORT OWNERSHIP PLAN (MROP), Timeshare Development registration, Salt Lake City, UT. In an October 13, 2010 settlement agreement and order, MROP agreed to pay a \$1,000 civil penalty in order to resolve the Division's investigation of complaints that the developer collected a special assessment fee in violation of MROP bylaws, which act if proved would violate Utah Code §§ 57-19-5(2) and 57-19-13(1)(a). Case number RE 37466.



<p>Utah!</p>	<p>DIVISION of REAL ESTATE NEWS</p>
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