

Utah! DIVISION of REAL ESTATE NEWS

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

Jon M. Huntsman, Jr., Governor • Francine A. Giani, Executive Director • Derek B. Miller, Division Director

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Common Appraisal Issues

By Craig Morley
Chair - Appraiser Licensing &
Certification Board

MLS Photos

The Fannie Mae residential appraisal form defines the scope of work and includes a number of supplemental standards that exceed those required by USPAP. If you use the Fannie Mae forms and sign the certification page, you have agreed to comply with the scope of work defined and the supplemental standards. Under the "Scope of Work", it states that:

"The appraiser must ... (3) inspect each of the comparable sales from at least the street". When an individual submits an application to become Licensed or Certified, many of the appraisals being submitted for experience credit have a large number of photos taken from the Multiple Listing Service (MLS). Why are MLS photos being used if the appraiser is inspecting the comparable sales? While there may be some legitimate reasons why an MLS photo might be used occasionally, when a large number of MLS photos are consistently being used we become concerned that some appraisers may not be inspecting the comparable sales as required in the scope of work. To sign a certification in which you state that you did something that you did not do, is misleading and unethical and constitutes an ethical violation of USPAP. Please note that FHA requires the appraiser to provide a photo taken by the appraiser even if an MLS photo is used.

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CE Banking Requirement For Real Estate & Mortgage Industries

-CE Providers and Licensees Take Heed-

Real estate and mortgage licensees as well as providers of both real estate and mortgage continuing education are now both under a similar obligation to comply with CE banking requirements. (For Real Estate Rule see Administrative Rule R162-9.8 – 9.8.3. For Mortgage Rule see Administrative Rule R162-208.7.1 – 208.7.5).

Real Estate Rule -9.8 – For purposes of this rule, "continuing education banking" is defined as the upload by a course provider of such information as specified by the Division to the Division's data base concerning the students who have

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From the Director's Desk



Derek B. Miller

You have likely heard, seen or read about a new report ranking Utah as the number one state for mortgage fraud: a ignominious distinction for our state, our industries and each of us individually.

This news is disappointing and frankly embarrassing. It is also completely unacceptable. The purpose of this article is to figure out what each of us can do to help fix the problem.

First, let's get an idea of what we mean by the term "mortgage fraud". I've mentioned in previous articles that mortgage fraud can involve real estate professionals, title companies, appraisers, as well as mortgage officers and lenders. It is also important to detail what kind of fraud we are talking about. Below is a list of the four most common types of fraud we see at the Division of Real Estate:

- Application Fraud (misrepresentation of employment, income, owner occupancy, etc.)
- Straw Buyers (using a different identity and/or credit score to buy a home)
- Equity Skimming (real estate "investors" who purchase homes, refinance at inflated values, keep the "equity", and flip the properties)
- Artificially Inflated Appraisals (from a "bought-appraiser", falsified appraisal, or using cash purchases to create "comps")

Successfully combating fraud in our state will require concerted effort on three fronts: administrative, criminal, and the industry. Administratively, the Division must do more in investigating fraud and taking administrative action. The Division must be more proactive and not only investigate what we hear about second hand through the complaint process. The way the Division can be more proactive is by conducting field visits to company offices and auditing files. Division resources need to be redeployed to areas of the most concern, starting with application fraud and moving down the list. The Division needs improved processes for swifter action against bad actors. I am committed to working

with the Division's new Enforcement Director to move aggressively and quickly in this direction. New laws passed by the Legislature and signed by the Governor will give the Division the tools and resources needed to accomplish this mission.

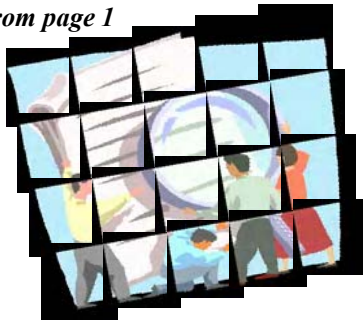
Secondly, we need more criminal prosecution and convictions. Criminal penalties are an important part of reducing mortgage fraud in our state. While administrative action is a great tool, the truth is that the most the Division can do is to take away someone's license and issue fines. Criminal prosecution puts people in jail and that is exactly where many of these scam artists belong. At the Division, we are changing the way we conduct investigations and prepare referrals in order to facilitate more criminal prosecution. We look forward to working with the County Attorneys, Attorney General's Office and the U.S. Attorney in accomplishing this goal.

The third "front" in our war on fraud is the industry. I am pleased with the concern shown by the appraisal, mortgage and real estate associations. Since the release of the state rankings for fraud I have been contacted by many industry groups, expressing their interest and support for fighting fraud. This support is critical to solving the problem. At the foundation of these industry groups is each of you – the most important part of winning this fight against fraud. The first step each of you can take is to maintain high ethical and professional standards. Too many times have I heard the excuse that someone "tweaked an appraisal" or "exaggerated a client's income" or "failed to make a disclosure" in an effort to "help someone get into a home". Anyone who feels justified in this type of illegal behavior should realize that according to the reported statistics, these kinds of things make up the largest number of fraudulent loans. I urge each of you to be careful in how far you are willing to go to help a client and recognize that is a poor excuse for committing fraud. Beyond personal behavior, I urge each of you to take responsibility for your profession by reporting fraudulent activity to the Division. In preparing to write this article, I researched the most common types of fraud cases at the

Division and also the most common types of complaints received by the Division. Seeing these two lists side-by-side revealed a startling and unexpected discovery: that not one of the top five complaints had anything to do with the top types of fraud. That tells me that we need more people willing to turn in information on the fraud going on out there. The truth is that we need your help in winning this fight and we look forward to hearing from you.



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Common Appraisal Issues

Trainees

If you are an Appraisal Trainee or are supervising a trainee, make sure that you know the rules associated with that practice. Trainees must work under a supervising appraiser. Any work obtained must be in the name of the supervisor (or the supervisor's company), and not the Trainee. The Trainee may not bill for appraisal services, but must receive payment for appraisal services from the supervising appraiser. The appraiser board is still seeing invoices generated by the appraisal trainee to the lender when they evaluate Trainee experience.

There is ongoing confusion regarding property inspections where the Trainee is involved. Current Utah State Administrative rules require 100 supervised residential inspections for a residential Trainee appraiser and 20 supervised commercial inspections. After the first 100 supervised inspections (20 inspections for commercial trainees), where a Trainee accompanies the supervisor on an inspection of

the subject property, the Trainee *may* inspect the property without the supervising appraiser.

If you are a residential appraiser working with a Trainee using a Fannie Mae appraisal report form, you (the supervising appraiser signing the report) must perform a complete interior and exterior inspection of the subject and an exterior inspection of the comparable sales as defined in the scope of work on the appraisal report form. The date of the inspection is when the appraiser who signed the report made the inspection, and not the Trainee.

Sales History

Standards Rule 1-5 indicates that:

“When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:

- (a) Analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal; and
- (b) Analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal.

Comment: See the Comments to Standards Rules 2-2(a) (viii), 2-2(b)(viii), and 2-2(c) (viii) for corresponding reporting requirements relating to the availability and relevance of information. When reporting an opinion of market value, a summary of the results of analyzing the subject sales, options, and listings in accordance with Standards Rule 1-5 is required. If such information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

USPAP requires a sales history of the subject property as defined above, but does not require a sales history for the comparable properties. However, Fannie Mae supplemental standards as defined by the forms in use by Fannie Mae require a one-year listing history of the subject and a one-year sales history of the comparable sales for residential properties. Utah State Rules require a three-year listing history on residential properties. Compliance with Standard Rule 1-5 is not optional when the assignment is to provide an opinion of market value. The appraiser must report all current agree-

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Common Appraisal Issues

ments of sale, options, listings of the subject as of the date of the appraisal and any prior sale that occurred three years prior to the date of the appraisal.

Common Problems

***Sales are reported, but are not analyzed.** Was the sale an arms length market transaction? If there are differences between the appraised value and the current or recent sale, it is good appraisal practice to explain why there is a difference.

***The owner of the property is different than the borrower, but no pending sale is reported.** An appraiser may be instructed that the purpose if the appraisal is for a refinance, but the owner of record is different than the borrower.

***Proposed construction does not include current contractor prior sales for the lot.** There seems to be a misconception that because building improvements are proposed, that an appraiser does not have to report current contracts or prior sales of the property i.e. the building site.

***A property is subject to a lease, but the terms of the lease are not reported or analyzed.**

Conclusion:

Make sure that you have completed all of the requirements outlined in Standard Rule 1-5 and related reporting requirements in Standard Rule 2-2(a)(viii), 2-2(b) (viii), and 2-2(c) (viii). You must not only report current agreements (including rental contracts), options and prior sales, but analyze them as well. While Utah is a non-disclosure state and sales prices are not part of the county record, you should document what you did. Counties that have on-line access to County records that report sales and transfers should be reported, even if the prices cannot be verified.



<i>Licensee Statistics</i>	
As of April 2007	
• REAL ESTATE	
Sales Agents	15,284
Principal Brokers	2,280
Associate Brokers	1,250
Branch Brokers	213
Dual Brokers	74
Property Management Brokers	21
Real Estate Companies	2,254
Pre-license Schools	13
Pre-license Instructors	50
CE Instructors	458
CE Providers	375
CE Courses	888
Inactive Sales Agent	4,264
Inactive Associate Brokers	65
Inactive Principal Brokers	311
• MORTGAGE	
Mortgage Lending Officers	7,085
Principal Lending Managers	1,256
Associate Lending Managers	189
Mortgage Companies	1,148
Pre-license Schools	16
Pre-license Instructors	54
CE Providers	67
CE Instructors	139
CE Courses	412
Inactive Individuals	2,294
Inactive Entities	761
• APPRAISERS	
Certified General Appraisers	364
Certified Residential Appraisers	666
Licensed Appraisers	191
Trainees	498

90 % of appraisers feel pressured

(WASHINGTON) – Ninety percent of real estate appraisers say they feel pressure from real estate agents and lenders to “hit the number” when placing homes value, creating an incubator for mortgage fraud.

A survey released by the American Society of Appraisers found that 90 percent of members said they had felt some pressure from banks and brokers, compared to 55 percent in a similar survey in 2003.

“I am not surprised that so many appraisers surveyed still feel pressured to hit a particular number to close a deal,” said Mike Evans, an ASA Fellow.

He said the pressure has led to instances of overvalued homes and property flipping that in turn have led to overpayments on homes, mortgage defaults, and government underwriters losing billions in fraudulent transactions.



Appraisers

Segment Your Way to a License or Certification



By Ronald M. Smith

Member of Utah Appraiser Licensing & Certification Board

This article is for you if you are a Licensed Appraiser wanting to become a Certified Residential Appraiser, but won't have enough experience before January 2008. In fact, if you are a Trainee, Licensed or Certified Residential, but without sufficient experience until 2008 (or later), this article is for you.

Consider "Segmented Licensing." Get your appraisal education approved in 2007, then finish the experience and testing in 2008. The Utah Appraiser Licensing and Certification Board has adopted the segmented approach to licensing to bridge the 2007-2008 education gap. By applying in 2007 FOR EDUCATION APPROVAL ONLY, you must meet the current education requirements. If you wait until 2008, the INCREASED 2008 requirements will apply.

The number of appraisal education hours is increasing beginning January 1, 2008.

<u>Category</u>	<u>2007 Requirements</u>	<u>2008 Requirements</u>
Licensed	90 hours	150 hours, no college
Certified Residential	120 hours	200 hours, Associate Degree or equivalent
Certified General	180 hours	300 hours, BA, BS Degree or equivalent

If you are currently a Licensed Appraiser, even if you won't have the required experience hours and/or points to apply to become a Certified Residential Appraiser until 2008, consider the benefits of applying in 2007 under the segmented approach. Successfully complete 30 hours of approved education (the difference between 90 and 120). Apply to have this education approved during 2007. You will thus avoid the 2008 requirement of 200 hours and an Associate College Degree or equivalent. The same principle holds true for those desiring to become Licensed or Certified General.

The key is: 1. Obtain the required hours of approved education as currently listed, and 2. Apply to the Division of Real Estate during 2007 under the segmented approach to have the education approved. You can then complete the experience hours/points in 2008. The appraisal application forms are available on the Division website, www.realestate.utah.gov.

There is one restriction: A Trainee cannot submit 120 or 180 hours in 2007 to satisfy the requirements to become Certified Residential or Certified General. The Trainee can only use the segmented approach to become Licensed. A Licensed Appraiser can use the segmented approach to become Certified Residential or Certified General.



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-CE Providers and Licensees Take Heed-

successfully completed a continuing education course, including the name of the course, the certificate number assigned to the course by the Division, the date the course was taught, and the names and license numbers of all students who successfully completed the course.

9.8.1 – Except as provided in Subsection 9.8.2, all course providers shall bank continuing education for all students who successfully completed a course within ten days after the course was taught.

9.8.2 – If a course provider is unable to bank a student's continuing education credit because the student has either failed to furnish the name registered with the Division and/or the student's license number, or has furnished an incorrect license number or incorrect name to the course provider, the course provider shall not be disciplined by the Division for failure to bank the student's continuing education due to the reasons specified above.

9.8.3 – A student who fails to provide an accurate license number and the name registered with the Division to a course provider within 7 days of course attendance shall not receive continuing education credit for the course attended.

The mortgage rule is very similar to the language found above.

The Division takes no satisfaction in sanctioning education providers for failing to comply with these CE banking requirements. Having said that, the Division continues to be contacted by licensees describing how their education provider has failed to bank their CE credits despite being more than ten days since the course was taught, and despite receiving repeated communications.

We offer a precautionary warning to all real estate and mortgage continuing education providers to comply with these rules or risk the associated consequences (including fines, and other discipline).



Can a licensee act as a limited agent/broker in any transaction in which he is a principal?

R162-6.1.11.3.1 A licensee may not act or attempt to act as a limited agent in any transaction in which: a) the licensee is a principal in the transaction; or b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction.

Utah! DIVISION of REAL ESTATE **NEWS**

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Upcoming Changes To Real Estate Continuing Education Rules

New Administrative Rules are being considered by The Utah Real Estate Commission but have not yet been adopted.

A list of some of the proposed changes to existing continuing education rules are listed and discussed below:

- **The distinction between “live” and “passive” education will be eliminated.** Licensees will no longer have to concern themselves as to whether the mix of their education course completion certificates are “live” or “passive”.
- **CE Courses will now be approved by the Division as either “traditional education”** (education conducted between an instructor and students where both are physically present in a classroom); **or, “distance education”** (education not occurring in a traditional classroom setting, but through interactive instructional methods such as interactive computer software or internet-based instruction). Either “traditional” or “distance education” classes will satisfy the 12-hour continuing education requirement
- **Continuing Education courses that currently utilize video tapes will not be allowed under the proposed rules. Current Videotape CE instruction is neither “traditional education” nor “distance education” according to the requirements of these new rules.** Licensees need to plan their schedules accordingly (especially during the last week prior to the expiration of their license) to either take “traditional education” or “distance education” that is certified by the Division from either their home computer, Real Estate Schools or Boards of Realtors® (if they have courses approved for distance education).
- **Beginning July 1, 2007, elimination of the Division produced mandatory Core Course that all licensees were previously required to view as part of their license renewal process.**
- **A select number of courses will be approved by the Division as approved “Core Topic Courses”.** The subject matter of these courses will be: 1) state approved forms/contracts, 2) ethics, 3) agency, 4) prevention of real estate and mortgage fraud, 5) federal and state real estate laws, and 6) brokers trust account.
- **Beginning July 1, 2007, during the first license period, a licensee must take the 12-hour “New Sales Agent Course”,** as certified by the Division. This course is required for all new licensees who licensed on or after July 1, 2007. During subsequent license periods a licensee must take at least **6 hours of continuing education from courses certified by the Division as “Core Topic Courses”**. A licensee may take any remaining hours of continuing education from courses certified by the Division as “elective” courses.

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- **An expanded list of approved “elective”, course subjects (non Core Topic Courses) has also been proposed to encourage educational offerings on meaningful topics that may now be under represented.**

The Division and Real Estate Commission believe that when these rules become effective (approximately July 1, 2007) real estate continuing education and the processes associated with licensing and license renewal will have been meaningfully improved. The underlying reason for these changes is to encourage and improve the overall quality of continuing education for real estate licensees. The Division appreciates all the enthusiastic feedback received from individuals regarding these significant changes.



“2007 CARAVAN”



Cär-ä-vän: *An annual trek to remote Utah locations made by Division staff to promote dialog between Division staff and licensees.*

This year, the Caravan journeyed to St. George, Richfield, Moab, Park City, Brigham City and Provo. This outreach effort throughout the state provides an opportunity for mutual interaction and feedback between licensees and Division staff.

An in depth and close look at the causes and impacts of mortgage fraud was presented by Dee Johnson the Enforcement Director of the Division. Mark Fagergren, the Division

Licensing and Education Director provided an update on significant rule changes that have occurred in each of the three professions over the past year. He also shared information about the Division’s revised website and the exciting new License Management System that will be introduced later this spring.



Division Director Derek Miller offered a report on the current challenges the Division is working to resolve for the next year. He also spoke about the accomplishments and hurdles the Division has overcome this past year. Director Miller shared his thoughts on the benefits the Division receives “...when licensees offer insight and provide input on what we are doing well, and how we need to improve”.

Comments from some attendees include the following statements: “It was good to get together and learn from the source about what the Division is doing... Thank you”. “I think it is great that you make the effort to go to the outlying areas to inform us... thanks”. “Very good information given – I appreciate the updates and education delivered”.

The Division wishes to thank those of you who were able to attend the 2007 Caravan, especially those who had constructive feedback for the Division.



Licensing Actions and Disciplinary Sanctions

APPRAISER



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.

***No Disciplinary Actions administered
for the quarter.***

MORTGAGE



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.

DEAL, JOSHUA, Mortgage Officer Applicant, Woods Cross, UT. Application for mortgage officer license denied in a February 27, 2007 Order because of past criminal history including three instances of lying to police, eight instances of driving on a suspended license, and failures to appear and to pay fines in criminal cases. He may not reapply for one year from the date of the Order.

EDWARDS, MERRILL BLAKE, Mortgage Officer, Sandy, UT. Application for renewal denied because of factors including a plea to felony theft, and failures to appear

and to pay fines in criminal cases. He may not reapply for a new license for one year from the date of the Order.

FALK, MICHAEL, Mortgage Officer, Park City, UT. Application for reinstatement of expired license granted in a March 14, 2007 Order, but the license was then suspended until he provides evidence to the Division that he is no longer on criminal probation and has completed all court requirements. Factors in the decision included past domestic violence convictions or pleas in abeyance, an intoxication conviction, revocation of probation in one of the cases, and failure to disclose two of the criminal cases to the Division on his 2004 application for license renewal.

HOPKINS, KATHY, Mortgage Officer, Gunnison, UT. Application for Principal Lending Manager license denied in a February 12, 2007 Order, based on factors including violating the mortgage statute by using unlicensed persons to engage in the business of residential mortgage loans on behalf of Elk Ridge Financial, operating unregistered branch offices of Elk Ridge Financial, violating a Cease and Desist Order issued by the Division, and making a false representation to the Division. Ms. Hopkins may not reapply for a Principal Lending Manager license for two years from the date of the Order.

NELSON, MICHAEL, Mortgage Officer Applicant, Salt Lake City, UT. Application for mortgage officer license denied because of factors including felony convictions in the last five years, including a conviction of felony Identity Fraud, and having done loans in Colorado without a license. He may not reapply for two years from the date of the Order.

ROBERTSON, ROSA, Mortgage Officer, South Jordan, UT. Agreed to pay a \$300.00 fine for violating Administrative Rule 208.4.1, which requires that a minimum of 3 of the 14 hours of continuing education required to renew a license must be in a course related to compliance with Federal and State laws governing mortgage lending. When audited by the Division, Ms. Robertson submitted proof that she had taken 15 hours of education in the past two years, but none of the courses related to compliance with Federal and State laws governing mortgage lending. After the audit, Ms. Robertson completed a 3-hour State and Federal law update course, which will be applied retroactively to her 2006 renewal and

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shall not count toward her continuing education requirement on her 2008 renewal. #MG30619.

REAL ESTATE



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.

AUSTIN, KARY, Sales Agent, Bountiful, UT. Agreed to pay a \$600.00 fine for violating Utah Code Ann. § 61-2-9(2)(a)(i), which requires as a condition of license renewal the completion of 12 hours of continuing education within each two-year renewal period, and Administrative Rule R162-9.1.2, which requires 3 of the 12 hours of continuing education to be the Division's "core" course. When audited by the Division, Ms. Austin submitted proof of having completed 8 hours of continuing education, and the Division's "core" course was not included in those hours. Ms. Austin thereafter completed the "core" course and another course, which will be credited retroactively to her 2006 renewal and shall not count toward her 2008 renewal. #RE31839.

BALSTERHOLT, JAMES W., Sales Agent, Sandy, UT. Agreed to pay a \$100.00 fine for violating Utah Code Ann. § 61-2-9(2)(a)(i), which requires as a condition of license renewal the completion of 12 hours of continuing education within each two-year renewal period. When audited by the Division, Mr. Balsterholt could only supply proof of having completed 11 hours of continuing education. Mr. Balsterholt shall also complete an additional 1-hour course that will be credited retroactively to his 2005 renewal and shall not count toward his 2007 renewal. #RE26902.

BRINGHURST, JARED, Sales Agent, Midvale, UT. Agreed to pay a \$1,500.00 civil penalty to the Division and complete a remedial education requirement for violating Utah Administrative Code Sections R162-4.2.1, which

requires all money received to be delivered to the principal broker except for certain exceptions permitted by rule, and R162-6.2.7, which requires a sales agent to keep his principal broker informed on a timely basis of all transactions in which the agent has received funds or in which an offer has been written. Mr. Bringhurst failed to inform his principal broker about a transaction, continued to work transactions during a period of time during which his license was expired, and delivered earnest money to a title company instead of his principal broker. #RE29928

COFFMAN, ALICE, Pre-licensing Instructor, Layton, UT. Agreed to the revocation of her sales agent pre-licensing instructor certification, the denial of her application for broker pre-licensing instructor certification, payment of a \$2,500.00 civil penalty to the Division, and a two year probation of her real estate broker license for violating Utah Administrative Code Section R162-8.5, which requires instructor applicants to meet the criteria of integrity and competency. Division employees observed Ms. Coffman referring to a sheet of paper containing answers to exam questions while she was taking an examination administered by the Division. #RE33140

DIFRANCESCO, DARREN K., Sales Agent, Draper, UT. Agreed to pay a \$600.00 civil penalty for violating Utah Administrative Code Section R162-3.6.1.4, which states that any misrepresentation in an application for renewal is considered grounds for disciplinary action. When audited by the Division, Mr. Difrancesco could only supply proof of having completed 8 hours of continuing education in the past two years, and those hours did not include the Division's core course. Mr. Difrancesco took additional courses that have been credited retroactively to his 2006 renewal and shall not count toward his 2008 renewal. #RE29365

DRECHSEL, KAROL K., Sales Agent, Draper, UT. Agreed to pay a \$300.00 fine for violating Utah Code Ann. § 61-2-9(2)(a)(i), which requires as a condition of license renewal the completion of 12 hours of continuing education within each two-year renewal period. When audited by the Division, Ms. Drechsel could only supply proof of having completed 9 hours of continuing education in the past two

years. Ms. Drechsel agreed to take an additional 3-hour continuing education course that will be credited retroactively to her 2006 renewal and shall not count toward her 2008 renewal. #RE28908.

FUENTES, FELIX, Sales Agent Applicant, West Jordan, UT. Application for sales agent license denied in a February 13, 2007 Order because of factors including the fact that he is still on criminal probation and has not yet completed payment of all of his fines and a long criminal history including theft, unlawful possession of alcohol or controlled substances, domestic violence, and fleeing from police. Mr. Fuentes may not reapply for two years from the date of the order denying his application.

HAMILTON, SUSAN L., Principal Broker, Duchesne, UT. Agreed to pay a \$500.00 civil penalty to the Division and complete a remedial education course for violating Utah Code Section 61-2-11(4) by acting for more than one party in a transaction without the informed consent of all parties. While acting as the listing broker, Ms. Hamilton also represented a prospective buyer for the home without obtaining the seller's initials on the listing agreement consenting to limited agency. A sales agent licensed with Ms. Hamilton's brokerage also represented a second buyer interested in the same home and indicated on the REPC that Ms. Hamilton represented both buyer and seller as a limited agent. #RE31176

O'BRIEN, CHARLES, Sales Agent, Draper, UT. Agreed to pay a \$1,500.00 civil penalty to the Division for violating: Utah Code Section 61-2-11(8), being unworthy or incompetent to act as a sales agent; Section 61-2-11(16), breaching a fiduciary duty owed to a licensee in a real estate transaction; and 61-2-11(18), unprofessional conduct. Mr. O'Brien acted as a buyer's agent in a transaction and when the sellers had not completed work on repair or replacement of wooden flooring prior to closing, money was placed in escrow for the buyers to use to complete the flooring repair/replacement. Mr. O'Brien failed to draft an addendum to the REPC that adequately covered the agreement on repair of the flooring. #RE25879

POOL, RYAN, Sales Agent, South Jordan, UT. Agreed to pay a \$1,000.00 civil penalty to the Division and complete a remedial education requirement for violating Utah Administrative Code Section R162-1.1.11.3.1, which prohibits acting as a limited agent in a transaction in which the license is a principal in the transaction, or any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction. Mr. Pool acted as a limited agent in a transaction in which RP Realty was the buyer. Mr. Pool is the director and a principal shareholder of RP Realty. #RE31649

QUINTON, RYANN., Sales Agent, Draper, UT. Agreed to pay a \$600.00 civil penalty for violating Utah Code Section 61-2-9(2)(a)(i), which requires as a condition of renewal the completion of 12 hours of professional education approved by the Division and Commission within each two-year renewal period. When audited by the Division, Mr. Quinton supplied course completion certificates for 6 hours of education dated within the two years preceding his renewal and certificates for the remaining 6 hours that were dated two days after his renewal date. Mr. Quinton maintained in mitigation that he had actually completed viewing videotapes prior to his license expiration date but that because of the Memorial Day holiday weekend, he was unable to return the videotapes and obtain his course completion certificates until several days later. #RE24848

SHEHAN, MICHAEL L., Sales Agent, Sandy, UT. Application to renew granted in a February 27, 2007 Order on the conditions that he pay to the Division the \$500.00 civil penalty he agreed to pay to settle Case RE28883 and that he complete an additional one hour of continuing education to complete the 12 hours of continuing education required for renewal.

STEED, ROBERT W., Sales Agent, Midvale, UT. Agreed to pay a \$600.00 civil penalty for violating Utah Administrative Code Section R162-3.6.1.4, which states that any misrepresentation in an application for renewal is considered grounds for disciplinary action. When audited by the Division, Mr. Steed could only supply proof of having completed 6 hours of continuing education in the past two years. Mr. Steed completed an additional 6 hours of continuing educa-

continued from page 11

tion courses that were credited retroactively to his 2005 renewal and shall not count toward his 2007 renewal. #RE25448

VIDAL, ROBERTO, Sales Agent Applicant, West Jordan, UT. Application for sales agent license approved on probationary status in a February 27, 2007 Order because of factors including a past criminal history. While his license is on probation, Mr. Vidal will be required to inform any principal broker with whom he licenses that his license is on probationary status and to submit to the Division written acknowledgement from each such broker that the disclosure has been made.

WHIMPEY, KATHY, Sales Agent, Nephi, UT. Agreed to pay a \$2,500.00 fine, complete remedial education, have her license placed on probation for 3 years, and that she will not act as a real estate agent for any immediate family member for three years because of a transaction in which she violated: Utah Code Ann. § 61-2-11(1), making a substantial misrepresentation; Utah Code Ann. § 61-2-11(16), breaching a fiduciary duty owed by a licensee to a principal in a transaction; and Utah Code Ann. § 61-2-11(18), unprofessional conduct. #RE19722.



Colorado wants appraiser intimidation to stop

(DENVER) – The Colorado Legislature is expected to open debate on whether real estate brokers and agents, along with lenders, should be criminally liable for attempting to intimidate appraisers.

Legislation is being introduced that would bar real estate professionals from trying to force appraisers to value properties at what they could sell for, rather than a fair market price.

It is hoped the legislation will curtail land flipping and mortgage fraud, which has gone up dramatically in recent years – often thanks to appraisers willing to go along with inflated prices. Colorado has one of the highest foreclosure rates in the country.

REIntelligence Report

WORLDSAVINGS BANK, Certified Real Estate Education Provider, Oakland, CA. Agreed to pay a \$37,000.00 civil penalty to the Division. The Division alleged that Utah representatives of World Savings Bank gave continuing education certificates to 74 mortgage licensees for courses that had not yet been certified by the Division as continuing education for mortgage licensees, and then, after the courses were certified for mortgage licensees, retroactively issued new continuing education certificates to the mortgage licensees showing that the licensees had attended the courses after the courses were certified by the Division. World Savings Bank neither admitted nor denied the allegations made by the Division. #RE33007



FBI Mortgage Fraud Warning

Fraud against lenders is a rapidly growing problem. It can affect not only lending institutions, but innocent homeowners and the community at large. It is a problem that requires the close cooperation of law enforcement and the real estate finance industry. That cooperation includes educating the general public as to what constitutes mortgage fraud and what the consequences of mortgage fraud are.

To that end, the Federal Bureau of Investigation and the Mortgage Bankers Association have jointly produced a Mortgage Fraud Warning Notice. This Warning Notice makes clear that mortgage fraud is a federal offense with serious penalties, and will be fully investigated and prosecuted by the appropriate authorities. The FBI and MBA strongly encourage lenders to consider integrating the Warning Notice into their loan processes.

USPAP Q&A

Vol. 9, No. 1
January 2007

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to inform appraisers, regulators, and users of appraisal services of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems.

“Effective Date” of USPAP

Question:

Does the 2006 USPAP apply in 2007?

Response:

Yes. The 2006 edition of USPAP became effective on July 1, 2006 and remains in effect until a new edition of USPAP is adopted.

Changes to 2006 USPAP

Question:

Is the Appraisal Standards Board considering changes to the 2006 edition of USPAP?

Response:

Yes. The Appraisal Standards Board (ASB) regularly receives comments and suggestions for improving USPAP. The ASB has released for public comment an Exposure Draft that presents proposed changes for the next edition of USPAP. The Exposure Draft can be accessed at The Appraisal Foundation website: www.appraisalfoundation.org. The deadline for written comments is January 25, 2007. Comments are also invited at the ASB Public Meeting on February 2, 2007 in San Francisco, California.

Question:

When will the next edition of USPAP be available?

Response:

The next edition of USPAP is planned for 2008 and is currently scheduled to be available in the fall of 2007. The 2008 edition of USPAP is scheduled to be effective on January 1, 2008 and is planned to remain in effect through the end of 2009. This is consistent with the ASB's goal of changing USPAP less often and moving to a two-year cycle publication schedule.



Freddie Mac Announces New Subprime Loan Standards

Freddie Mac has announced that it will cease buying subprime mortgages that have a high likelihood of excessive payment shock and possible foreclosure. Freddie Mac is the stockholder-owned company established by the U.S. Congress in 1970 to support homeownership and rental housing by purchasing residential mortgages and mortgage-related securities. Taking a two-tiered approach, Freddie Mac will first only buy subprime adjustable-rate mortgages and mortgage-related securities backed by subprime loans that qualify borrowers at the fully-indexed and fully-amortizing rate instead of the initial “teaser” rate. Second, Freddie Mac will limit the use of low documentation underwriting for these types of mortgages to help ensure that future borrowers have the income necessary to afford their homes. In addition, Freddie Mac will strongly recommend that mortgage lenders collect escrow accounts for borrowers' taxes and insurance payments. Freddie Mac states that the new requirements add to its many efforts as a secondary mortgage market investor to combat predatory lending and promote foreclosure prevention. Implementation is scheduled for September 1, 2007. More information is available at www.freddiemac.com/news.



Continuing Education Certificate Expiration Dates..... What Do They Mean To The Licensee?

I have CE certificates and the expiration date has passed.....

Are those certificates still good to use?

I am renewing but I don't think I can use these certificates?

I took this class within my two year renewal but the
certificate shows expired?

Course Certification Expiration Date reflects the last day that a continuing education provider can teach the class. This date does not mean that the course is expired for the licensee. For licensee renewal, the course is good for the licensee as long as it was taken within the last two years prior to renewal. For licensee activation, the course must have been completed within one year prior to the date the licensee is activating.

Utah Real Estate/Mortgage Continuing Education Certification

***TITLE OF COURSE
COURSE PROVIDER***

Date of Course: DATE LICENSEE ATTENDED COURSE

This certifies that **LICENSEE NAME**, license number **LICENSEE #**
(Please PRINT student's name) has completed **12 hour(s)**
of (check one) **LIVE OR** **PASSIVE** real estate/mortgage continuing education.

Student Signature

Course Sponsor Signature
(Sign or Initial in Blue Ink)

Certification # R/M070315
(COURSE CERTIFICATE NUMBER)

Course Certification Expiration Date: March 31, 2009
**(DATE COURSE EXPIRES OR LAST DAY
PROVIDER CAN TEACH THIS COURSE)**



Staff Spotlight



The Utah Division of Real Estate Announces Dee H. Johnson As The New Director of Enforcement

Dee Johnson and The Division are excited about his new role as Director of Enforcement with The Utah Division of Real Estate. He has been working in enforcement for the Division since 2001.

Dee attended BYU and graduated with a BA degree in Economics and Political Science in addition to playing sports. He began his career in real estate while attending law school in San Francisco, California. He soon became a broker and established his own brokerage which conducted both residential and commercial real estate, mortgage and appraisal services.

After eleven successful years of operation, his office was purchased and he was appointed as office manager. Dee prospered in his position and advanced to become a regional manager and then executive Vice President for Coldwell Banker Company.

In 1995 he moved to Utah where he again managed a Coldwell Banker office. His extensive years of experience in each of the three industries regulated by the Division have helped him excel in his previous capacity as investigator, Chief Investigator and his new appointment in January of 2007, as Director of Enforcement.

At a critical time when the Division began registering mortgage officers, Dee played a major role in the oversight of this newly regulated profession. Benefiting from his wealth of experience and reasoned judgment, the Division utilized Dee in numerous capacities including his ability to investigate complex fraud cases involving multiple industries.

Dee is encouraged by recent legislative changes allowing the Division to look beyond merely taking an offender's license, to potentially tapping illegal proceeds resulting from illicit and/or fraudulent behavior. The combination of the leadership of the Division's Director (Derek Miller), and the new legislation directed towards stopping mortgage fraud, has Dee optimistic and enthused about the Division's bright future. "We now have a real opportunity to curb loan fraud in Utah. Mortgage fraud has taken a toll on the Utah economy as well as the reputations of the State, the Division, and licensees that we serve", says Johnson.

The Division is now approaching its full complement of enforcement staff. Dee expresses that... "The Division has very capable and specialized investigators in each of the professions we regulate". He is secure in the competency and professionalism of the staff he now supervises. "I am confident in their ability to positively impact the challenges facing our industries". Dee is also the first to recognize that the vast majority of our licensees are both honest and hard working. "A few 'bad apples' can draw down the professionalism of our three industries. Less than 1% of all licensees require the attention and efforts of our investigative staff" according to Dee.

Dee's enthusiasm is tempered as he recognizes the real challenges ahead. He is further assured that he and his staff are capable of confronting the current obstacles as well as facing those yet on the horizon. The Division is pleased to have the dedicated service of Dee Johnson, and look forward to him functioning in his role as Enforcement Director.



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