

Division of Real Estate

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Second Quarter 2015

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Director's Message

Ready or Not, Here Comes TRID



Jonathan Stewart
Contributions by Lance Miller

There have been rumors that the Consumer Financial Protection Bureau was considering delaying the August 1st deadline for implementation of TRID, and on June 17 those rumors were confirmed when the CFPB announced a "proposal to delay the effective date of the TILA-RESPA Integrated Disclosure rule

until Oct. 1" (Swanson, 2015). Prior to this announcement, Steven Antonakes, Deputy Director of the CFPB, said:

We have no plans to delay the deadline on the new mortgage disclosure forms. The industry should be prepared to begin using the new forms for loans with an initial application submitted on or after Aug. 1. The deputy director was pointing out that the Bureau is open to considering new information from stakeholders, not to delaying the deadline (Swanson, 2015).

With the June 17 announcement, we now know the CFPB has considered feedback and delayed the implementation deadline. In addition to changing the deadline, they recently announced in a blog post that the CFPB "will be sensitive to the progress made by those entities that have been squarely focused

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on making good-faith efforts to come into compliance with the rule on time” (Thompson, 2015).

Mortgage lenders have been anticipating this change for the past 18 months, but in a recent survey, “41% of mortgage lenders report that they are not prepared to meet the August 2015 deadline to comply with the Truth in Lending Act and Real Estate Settlement Procedures Act Integrated Disclosure Rule” (Gaffney, 2015). In addition, “only 12% of respondents reported that their companies are ‘very prepared’ to meet the August 2015 TILA-RESPA requirements” (Gaffney, 2015).

This article is meant to provide a brief overview, but it should not be relied upon to make business decisions. If you are not preparing for the new October 1 deadline, start now. There are several resources to help you gain an understanding of TRID and how it will affect you and your business. A good place to start is with the Executive Summary of the Rule, which can be found here: http://files.consumerfinance.gov/f/201312_cfpb_tila-respa_executive-summary.pdf . The Rule is 1,888 pages long, but the Federal Register version is 637 pages, which might be a more realistic version to use around the office. The CFPB also released a Small Entity Compliance Guide, but this should not be relied upon for a thorough understanding of the rule nor its implementation. A comprehensive review of the Rule or Federal Register version is a must for all mortgage lenders.



The Rule: http://files.consumerfinance.gov/f/201311_cfpb_final-rule_integrated-mortgage-disclosures.pdf

Federal Register Version: <https://www.federalregister.gov/articles/2013/12/31/2013-28210/integrated-mortgage-disclosures-under-the-real-estate-settlement-procedures-act-regulation-x-and-the>

Small Entity Compliance Guide: http://files.consumerfinance.gov/f/201503_cfpb_tila-respa-integrated-disclosure-rule.pdf

The Basics

For most real estate transactions¹ the **Loan Estimate** will be replacing the Good Faith Estimate and the initial Truth-in-Lending Disclosure. The **Closing Disclosure** will be replacing the HUD-1 Settlement Statement and the final Truth-in-Lending disclosure. These new forms will be required on any application taken on or after October 1, 2015. If the application is taken prior to October 1, 2015, all previous forms and disclosure rules will apply.

Lenders are required to provide the new Closing Disclosure to applicants at least three business days prior to consummation². If the lender is unable to document actual receipt of the Closing Disclosure, a 3-day mailing rule will apply, which will make this a 7-day rule. Certain changes to the Closing Disclosure will require a new 3-day waiting period. These changes include: changes to the APR above 1/8 of a percent for most loans (and 1/4 of a percent for loans with irregular payments or periods), changing the loan product, or adding a prepayment penalty.

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With the implementation of TRID, most of the time the lender will prepare the Closing Disclosure rather than the settlement agent. Because of this, last-minute changes will also be made by the lender. Changes that do not require an additional 3-day waiting period could still delay the closing because the lender will, in most instances, need to make the change and send the new Closing Disclosure (CD) to the settlement agent.

Let's look at a few examples:

Closing Disclosure Delivery

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	CD mailed	CD received by buyer			Earliest Close	

In this example, the CD was mailed through standard USPS delivery. While the lender would typically be required to wait for three days until delivery could be assumed, the borrower actually received the CD on Tuesday. If the lender is able to document this receipt, the loan may close on Friday.

¹Reverse mortgages, HELOCs, and mortgage loans secured by a mobile home or by a dwelling that is not attached to real property will not be affected by these new changes.

²The CFPB did not define consummation. Consensus among Utah lenders is that consummation is signing under Utah law. We recommend discussing this with legal counsel as well as your lenders as soon as possible to determine when they believe consummation takes place.

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	CD Emailed through compliant delivery			CD deemed received		
	Earliest Close					

If the Closing Disclosure is emailed on Monday, the borrower is assumed to have received the Closing Disclosure on Thursday. This means the transaction may close on the following Monday. It is important to note that email, even through an E-Sign Act compliant system, still requires documentation of receipt to avoid the three day waiting period. The next example illustrates how the timing changes if the borrower acknowledges receipt.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	CD emailed through compliant delivery system	Borrower acknowledges			Earliest Close	

In this example, the borrower actually acknowledges receipt, allowing the lender to use Tuesday as the date of receipt, making the earliest close date Friday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	CD Emailed through compliant delivery	Borrower acknowledges	APR out of tolerance New CD emailed	Borrower Acknowledges		
	Earliest Close					

This example illustrates the effect of a change which requires a new three day wait period. Remember, if the APR increases by more than .125 (in most cases), a new CD must be issued and a new three-day waiting period is required.

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	CD Emailed through compliant delivery	Borrower acknowledges	Seller credit changes. APR in tolerance		Earliest Close	

This scenario illustrates the effect of a change which does not require a new three day waiting period. Many changes which occur on the CD will not require a new waiting period and will not necessarily delay the closing date.

Remember: For this rule, count every day but Sundays and public holidays.

Based on the information we have now, most settlement agents will prepare a separate closing statement which will detail how the transaction will be disbursed. Many lenders will not authorize the delivery of the new Closing Disclosure to the agent/broker; they may have to obtain it from their client.

Real estate agents and brokers should contact their lenders as soon as possible to discuss how the implementation of TRID could affect transactions and how you can best help each other to prevent unnecessary delays. Communication with your lender before and after implementation will go a long way to ensure a smooth transition to these new rules. TRID will most likely result in longer closings. Some have estimated it may add as much as two weeks to the closing deadline. This will be important to remember when drafting contracts.

These are major changes, but I am confident that if we prepare now, many issues can be avoided. We have faced industry changes in the past, and I am confident we can successfully manage this challenge as well.

Gaffney, J. (2015). Survey Says: Mortgage Lenders Woefully underprepared for TILA-RESPA. *Housingwire*.

Swanson, B. (2015) CFPB moves TRID date to Oct. 1. *Housingwire*.

Swanson, B. (2015). CFPB Director Cordray corrects “serious misunderstanding” about TRID. *Housingwire*.

Thompson, D. (2015, June 3). Know Before You Owe: You’ll get 3 days to review your mortgage closing documents.

Retrieved from: <http://www.consumerfinance.gov/blog/2015/06/>



Thank You, Lance!

After 8 years of service, Lance Miller has bid the Mortgage Commission farewell. Lance served as both chair and vice chair of the Commission between the years of 2007-2015. Lance has an extensive background in the Mortgage and Real Estate industries that has provided great knowledge

and insight to the Division. His understanding of the Mortgage industry brought new ideas and solutions to the table.

We've been fortunate to have Lance on the Mortgage Commission and appreciate the direction and guidance he's provided to licensees and to members of the Division. We thank Lance for his dedication and wish him success in his future!



Appraisal Management Company Registration Renewal & Bond Cancellation

Appraisal Management Companies (AMCs) renew their registration on a biennial basis (every two years). A timely AMC renewal must be submitted to the Division before the registration expires. A timely renewal registration would include a completed and signed Division AMC renewal registration, the appropriate registration fee, and a certificate evidencing that the AMC has secured and will maintain a surety bond with one or more corporate sureties authorized to do business in the state in the amount of at least \$25,000.

Important Notice: An appraisal management company's registration is immediately and automatically suspended if the appraisal management company's surety bond lapses or is canceled during the term of a registration, and the AMC fails to obtain or reinstate a surety bond within 30 days after the day on which the surety bond lapses or is canceled. (Utah State Code Section 61-2e-204 (3))

In order to reinstate an expired registration, the AMC shall provide evidence to the Division that the AMC is in compliance with the surety bond requirement described in compliance with the surety bond requirement described above. If the AMC's registration was automatically suspended by the Division as a result of the surety bond coverage lapsing or cancellation, the AMC registration can be reinstated, **however the suspension would remain on the AMC's Division licensing records, and may require disclosure on subsequent state(s) licensing or registration applications.**

AMCs should take appropriate steps to ensure that their employees are informed of these bonding requirements and procedures to ensure that an AMC registration is not suspended for failure to maintain surety bond coverage throughout the entire two year registration period.



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Utah! Division of Real Estate

NEWS

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2015 Published by

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New Agent Sales Course – Continuing Reminder –

It has now been eight years since newly licensed real estate agents have been required by Administrative Rule to complete a 12-hour post licensing CE course designed for new sales agents before they can renew their real estate licenses. This course was created to assist new agents during the critical transition period after licensing. New agents are uniquely challenged during this initial licensing stage. This course was created and approved by the Real Estate Commission to assist those individuals making this transition and to help them in dealing with the realities they are exposed to as newly practicing licensees.

A “new agent” is any individual that receives a new real estate sales agent’s license, although they may have been previously licensed in Utah or another state at some time before they received this license.

Completion of this course satisfies 12 core topic hours of the new agents’ 18 hour CE requirement during their initial licensing period. There are no substitute courses that may be taken in place of the New Agent Sales Course. All new real estate agents need to complete this course as part of their CE requirement in order to renew their license.

The New Agent Course has been very successful in providing new licensees a better understanding and proper use of state and industry forms including the Real Estate Purchase Contract (REPC), properly pricing properties for sale, a review of state and federal laws, and awareness and prevention of fraud.

Currently fourteen educational providers offer this New Agent Course. They can be found by accessing the Division’s education course search button on the Division’s real estate tab at: <http://www.realestate.utah.gov/education.html>. In Step 1 select “Real Estate.” For Step 2 check New Agent, Classroom, and Online. Step 3 is optional, and finally in Step 4 click “Run Search.”

The Division encourages Principal and Branch Brokers to remind their new sales agents of the importance of and requirement to complete this course during their initial licensing period



Rule Developments Since April 1, 2015

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



Appraisal Management

R162-2e – Every five years, state law requires that an administrative rule be reviewed and either continued or the rule expires. The five year review of the Appraisal Management Company Rules found in R162-2e occurred during the second quarter and the rule was continued.

Appraisal

There are no proposed rule amendments under consideration in appraisal licensing for the second quarter.

Mortgage

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

A proposed rule amendment has been approved for filing with the Division of Administrative Rules. After the proposed rule amendment is filed it will be available for public comment. The proposed rule amendment cannot become effective until after the public comment period. The proposed rule amendment addresses issues in several sections including rules regarding:

1. the registration of other trade names with the national database;
2. the certification of instructors for Division approved continuing education courses;
3. the entry of a licensee's residential address in the national database;
4. lending manager and mortgage entity responsibilities;
5. the remitting of appraisal fees within 30 days of receipt;
6. record retention;
7. formal and informal adjudicative proceedings; and
8. subsection numbering corrections.

Real Estate

R162-2f-401a – A proposal to amend this rule was filed March 3, 2015. The proposed amendment would require a licensee to obtain written permission from both buyer and seller before selling the final price information in a real property transaction. A licensee would be able to release, but not sell, the final sales price when allowed to do so by contract with either buyer or seller. During the public comment period numerous members of the real estate industry and the public expressed concern about the proposed rule amendment. A public hearing was held May 20, 2015 to gather more public input on the proposed rule amendment. The Commission is considering the public comment and has not yet taken action on the proposed amendment.

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R162-2f-401j – A proposal to amend this rule was filed April 27, 2015. The proposed amendment is to clarify that within 30 days of the termination of a contract for property management services, the principal broker must deliver all trust money to the property owner, the property owner's designated agent, or to another party as designated by contract between the principal broker and the property owner.

Timeshare and Camp Resort

R162-57a – Every five years, state law requires that an administrative rule be reviewed and either continued or the rule expires. The five year review of the Timeshare and Camp Resort Rules found in R162-57a occurred during the second quarter and the rule was continued.



Compensation Beyond the Commission: Things to Consider

Lately, the Division has seen a few transactions where compensation is offered directly by a principal to an agent, in addition to the commissions already offered in the transactions. For example, either an additional fee or a nice vacation is offered as well as a commission. There are a couple of issues to remember when accepting this additional compensation from a party.

First, remember that all compensation must go through a principal broker according to statute (UCA § 61-2f-305). Second, administrative rule R162-2f-401a(16) states as follows:

“An individual licensee shall...(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and (b) ensure that any such compensation is paid to the licensee's principal broker.”

According to the rule, all parties need to be notified in writing and the compensation still needs to go through the broker.

Another element to recognize as well: who is paying the funds and does it create any potential conflicts? One of the recent examples the Division has seen involved a builder offering an incentive to a buyer's agent who assisted the buyer to go under contract in a new construction transaction. This situation can create a couple of different concerns. First, remember that real estate licensees owe a fiduciary duty to their client. An incentive of this nature can cause there to be a conflict and could raise questions about whether the buyer's agent is showing this builder's homes to their client because it is in their client's interest, or in the agent's personal interest to receive the additional compensation.

Second, there may be federal laws and regulations (e.g. RESPA), that could apply to these situations as well. The Division suggests licensees consult with competent legal counsel to ensure their actions are not in violation of the any state or federal law.

- Year End Mortgage License Renewal - Fingerprint & Credit Reporting Required

(This article is a reprint from the March 2015 Newsletter)



Utah Mortgage licensees, who transitioned onto the NMLS system back in 2010, were required to be (re)fingerprinted, and authorize the issuance of a credit report. Subsequently, the Division reviewed and in some

instances took licensing actions restricting some licensees based upon the results of the fingerprint and credit reports.

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

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

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

The fourth quarter 2013 Division Newsletter, announced this previously referenced Administrative Rule Amendment.

This article is intended to further inform and notify all Utah mortgage licensees that when they submit a license renewal this fall (11/1/15 – 12/31/15), they will be required to re-authorize fingerprint and credit reporting.

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

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



Second Quarter Licensing and Disciplinary Actions

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

To view entire stipulations and/or orders search here:

<http://realestate.utah.gov/actions/index.html>

APPRAISAL

There are no appraiser licensing or disciplinary actions to report this quarter.

MORTGAGE

There are no mortgage licensing or disciplinary actions to report this quarter.

REAL ESTATE

ALDERIDGE, DUSTIN JAMES, sales agent, Sandy, Utah. In an April 3, 2015, order, Mr. Aldridge's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76045

BLACKMORE, VINCENT J., sales agent, LaVerkin, Utah. In a May 20, 2015, order, Mr. Blackmore's license was renewed and placed on probation while his contractor's license for 3D Construction is on probation with the Utah Division of Professional Licensing. Case number RE-15-76048

BOLLOW, RUSSELL P., sales agent, Salt Lake City, Utah. In a March 30, 2015, order, Mr. Bollow's license was renewed and placed on probation for the renewal period due to his criminal history. Case number RE-15-75894

BRADSHAW, RODNEY S., sales agent, Park City, Utah. In a March 2, 2015, order, Mr. Bradshaw's license was renewed and placed on probation for the renewal period due to his criminal history. Case number RE-15-75392

CAACKLER, DALLAS JARED, sales agent, Ogden, Utah. In a March 12, 2015, order, Mr. Cackler's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-75585

CISNEROS, TYLER DUANE, sales agent, Salt Lake City, Utah. In an April 17, 2015, order, Mr. Cisneros's application for licensure as a real estate sales agent was denied due to the previous sanction and later revocation of his insurance license. Case number RE-15-75074

CRAIG, BLAKE, sales agent, Fort Collins, Colorado. In a March 27, 2015, order, Mr. Craig's license was granted and placed on probation during the pendency of criminal charges against him and until the charges are resolved. Case number RE-15-5890

DEROS, JASON D., sales agent, West Jordan, Utah. In a stipulated order dated April 22, 2015, Mr. Deros admitted to having failed to disclose criminal history in his application for licensure as a sales agent. Mr. Deros agreed to pay a civil penalty of \$1500 and to have his license placed on probation for the initial licensing period. Case number RE-15-75665

DAHLSTROM, SUSAN M., sales agent, Salt Lake City, Utah. In a March 27, 2015, order, Ms. Dahlstrom's license was renewed and placed on probation for the renewal period due to her criminal history. Case number RE-15-75892

EASTHOPE, VICKEY, sales agent, Centerville, Utah. In a March 19, 2015, order, Ms. Easthope's license was granted and placed on probation for the initial licensing period due to the sanction of her license to practice as a massage therapist which included the surrender of her license to the Utah Division of Professional Licensing. Case number RE-15-74867

ESTEY, WILLIAM B., principal broker, Stansbury Park, Utah. In a March 23, 2015, order, Mr. Estey's license was reinstated and placed on probation for the reinstatement

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period due to civil judgments which have not been satisfied. Case number RE-15-75763

GARCIA, DAVID M., sales agent, Roy, Utah. In a March 27, 2015, order, Mr. Garcia's license was reinstated and placed on probation for the reinstatement period due to his criminal history. Case number RE-15-75896

GARLOCK, MATTHEW S., sales agent, Farmington, Utah. In a May 22, 2015, order, Mr. Garlock's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76853

GOHARY, BLANCA G., sales agent, Park City, Utah. In a March 19, 2015, order, Ms. Gohary's license was renewed and placed on probation for the renewal period due to her criminal history. Case number RE-15-74354

GRIFFITH, APRIL B., sales agent, Tooele, Utah. In a March 10, 2015, order, Ms. Griffith's license was granted and placed on probation during the pendency of criminal charges against her and until the charges are resolved. Case number RE-15-75563

HARPER, CHRISTOPHER B., sales agent, Midvale, Utah. In a stipulated order dated March 18, 2015, Mr. Harper admitted

to having failed to disclose criminal history in his application for licensure as a sales agent. Mr. Harper agreed to pay a civil penalty of \$500 and to have his license placed on probation for the initial licensing period. Case number RE-15-75599

HANEY, RACHAEL, sales agent, Salt Lake City, Utah. In an April 23, 2015, order, Ms. Haney's license was granted and placed on probation for the initial license period due to her criminal history. Case number RE-15-76392

HINTON, KALIFF TITO, sales agent, Woods Cross, Utah. In a May 21, 2015, order, Mr. Hinton's application for licensure as a real estate sales agent was denied due to the previous sanction of his license to practice as a massage therapist in which he agreed to surrender his license and not to reapply for licensure as a massage therapist for five years and due to Mr. Hinton's criminal history. Case number RE-15-76132

HIRST, CLAIR, sales agent, Salt Lake City, Utah. In a May 4, 2015, order, Mr. Hirst's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76578

HOCHING, BEAVER TAITULIATU, sales agent, South Jordan, Utah. In an April 9, 2015, order, Mr. Hoching's license was granted and placed on probation for the initial licensing period due to the prior sanction of his license

and his criminal history. Case number RE-15-76008

HUNLOW, CHRIS, sales agent, Murray, Utah. In a stipulated order dated May 20, 2015, Mr. Hunlow admitted to having failed to disclose criminal history in his application for licensure as a sales agent. Mr. Hunlow agreed to pay a civil penalty of \$1500 and to have his license placed on probation for the initial licensing period. Case number RE-15-75642

JENSEN, ASHLEY L., sales agent, Provo, Utah. In a stipulated order dated May 11, 2015, Ms. Jensen admitted to having violated the Utah Administrative Code regarding advertising requirements. Ms. Jensen agreed to pay a civil penalty of \$150. Case number RE-13-64934

JOHNSON, AUSTIN DANIEL, sales agent, Sandy, Utah. In an April 29, 2015, order, Mr. Johnson's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76476

JONES, BRENDA LEE, associate broker, Salt Lake City, Utah. In a March 6, 2015, order, Ms. Jones's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-75527

JORDAN, SHERI MARGARET, sales agent, Clearfield, Utah. In a March 27, 2015, order, Ms. Jor-

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dan's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-75889

KERSEY, SHANE, sales agent, Taylorsville, Utah. In an April 8, 2015, order, Mr. Kersey's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76098

KINGSTON, JASON ORTELL, sales agent, Salt Lake City, Utah. In a March 27, 2015, order, Mr. Kingston's license was renewed and placed on probation for the renewal period due to his criminal history. Case number RE-15-75895

LE, TRUC, sales agent, Salt Lake City, Utah. In a stipulated order dated April 15, 2015, Ms. Le admitted to having failed to disclose criminal history in her application for licensure as a sales agent. Ms. Le agreed to pay a civil penalty of \$500 and to have her license placed on probation for the initial licensing period. Case number RE-15-75649

LEISHMAN, MICHAEL SHANE, sales agent, Wellsville, Utah. In a March 3, 2015, order, Mr. Leishman's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-75411

LEWIS, RICHARD, sales agent, St. George, Utah. In an April 29, 2015, order, Mr. Lewis's application for licensure as a real estate sales agent was denied due to his failure to report a felony criminal conviction to the Division within ten days and due to his criminal history. Case number RE-15-76472

LISH, CLINTON J., sales agent, Deweyville, Utah. In an April 3, 2015, order, Mr. Lish's license was renewed and placed on probation for the renewal period due to his criminal history. Case number RE-15-75050

LOFTIS, THOMAS MACK, sales agent, Tooele, Utah. In a May 22, 2015, order, Mr. Loftis's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76847

LONG, RUSSELL AARON, sales agent, South Weber, Utah. In a May 8, 2015, order, Mr. Long's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76621

MACDONALD, MARK F., sales agent, Logan, Utah. In a March 26, 2015, order, Mr. MacDonald's license was granted and immediately suspended for one month due to his failure to disclose criminal history in his application for licensure as a sales

agent. Case number RE-15-75887

MARKHAM, SUSAN L., sales agent, Enoch, Utah. In a May 8, 2015, order, Ms. Markham's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-76619

MARMOL, AARON COLBY, sales agent, American Fork, Utah. In an April 2, 2015, order, Mr. Marmol's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76000

MARTINSEN, PAOLA, sales agent, Salt Lake City, Utah. In a stipulated order dated March 18, 2015, Ms. Martinsen admitted to having modified buyer and agency disclosures, having failed to disclose a familial relationship to the buyer and the escrow agent, and other violations in a short sale transaction that occurred five years ago. Ms. Martinsen admitted that her actions violated provisions of Utah Code § 61-2f-401(1)(c) (intentional misrepresentation), Utah Code § 61-2f-401(15) (dishonest dealing), and Utah Administrative Code R162-2f-401b(1)(a) and (b). Ms. Martinsen agreed to the suspension of her license for nine months and to pay a civil penalty of \$15,000. Case No. RE-12-58270

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MOSIER, DAVID BENJAMIN, sales agent, Clearfield, Utah. In an April 3, 2015, order, Mr. Mosier's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76042

MUSSELMAN, TAYLOR, sales agent, Ogden, Utah. In a March 19, 2015, order, Mr. Musselman's license was granted and placed on probation for one year due to his criminal history. Case number RE-15-75764

NIELSEN, TRENT J., sales agent, Murray, Utah. In a May 22, 2015, order, Mr. Nielsen's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76850

PIZANA, JAKIE, sales agent, West Jordan, Utah. In a stipulated order dated April 15, 2015, Mr. Pizana admitted to having failed to disclose criminal history in his application for licensure as a sales agent. Mr. Pizana agreed to pay a civil penalty of \$2500 and to have his license placed on probation for the initial licensing period. Case number RE-15-75646

PLATT, JOHN A., sales agent, Pleasant Grove, Utah. In a March 31, 2015, order, Mr. Platt's license was granted and placed on probation for one year due to his criminal history. Case number RE-15-75965

REPMAN, JONATHAN R., sales agent, Sandy, Utah. In a March 10, 2015, order, Mr. Repman's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-75557

REYNOLDS, CHARLIE, sales agent, St. George, Utah. In a stipulated order dated March 18, 2015, Mr. Reynolds admitted to having violated provisions of Utah Code § 61-2f-401(11) (false misleading, or deceptive advertising), Utah Administrative Code R162-2f-401a(1)(e) (requiring a licensee to uphold the fiduciary duty of reasonable care and diligence), and Utah Administrative Code R162-2f-401b(17) (written consent of the owner required to advertise or offer to sell property). Mr. Reynolds agreed to complete five hours of continuing education and to pay a civil penalty of \$2,000. Case No. RE-11-56571

ROBERTS, SHELDON TORY, sales agent, South Jordan, Utah. In an April 29, 2015, order, Mr. Roberts's license was renewed and placed on probation during the pendency of criminal charges against him and until the charges are resolved. Case number RE-15-76473

ROSE, PATRICIA LEE, principal broker, Santa Rose, California. In an April 3, 2015, order, Ms. Rose's license was renewed and placed on probation for the renewal period due to her criminal history. Case number RE-15-76043

RUE, JONATHAN, sales agent, Fort Collins, Colorado. In a March 27, 2015, order, Mr. Rue's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-75888

SANDERS, JACOB MICHAEL, sales agent, Ogden, Utah. In an April 3, 2015, order, Mr. Sanders application for licensure as a real estate sales agent was denied due to his criminal history. Case number RE-15-76040

SAWYER, VERONICA A., sales agent, St. George, Utah. In a May 22, 2015, order, Ms. Sawyer's license was renewed and placed on probation for the renewal period due to her criminal history. Case number RE-15-76846

SEELY, LYNN, sales agent, Vernal, Utah. In a stipulated order dated April 22, 2015, Ms. Seely admitted to having failed to disclose criminal history in her application for licensure as a sales agent. Ms. Seely agreed to pay a civil penalty of \$500 and to have her license placed on probation for the initial licensing period. Case number RE-15-75929

THOMSON, TRENT, sales agent, Farmington, Utah. In an April 17, 2015, order, Mr. Thomson's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76305

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ULIBARRI, MICHELLE, sales agent, North Ogden, Utah. In an April 9, 2015, order, Ms. Ulibarri's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-15-76127

VALDEZ, HECTOR, sales agent, Taylorsville, Utah. In a March 3, 2015, order, Mr. Valdez's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-75406

VALLE, STEVEN ROBERTO, sales agent, American Fork, Utah. In a May 22, 2015, order, Mr. Valle's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76856

VASHERUK, ROSSI M., sales agent, West Jordan, Utah. In a May 8, 2015, order, Ms. Vasheruk's license was granted and placed on probation for the initial licensing period due to her criminal history and unpaid civil judgments. Case number RE-15-76627

WILDING, JOHN D., sales agent, Provo, Utah. In an April 7, 2015, order, Mr. Wilding's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76099

WILKES, CHRISTIE L., associate broker, Heber City, Utah. In a stipulated order dated April 15, 2015, Ms. Wilkes admitted to having failed to disclose criminal history in her application for licensure as a sales agent. Ms. Wilkes agreed to pay a civil penalty of \$1000 and to have her license placed on probation for

the initial licensing period. Case number RE-15-75601

WILLIAMS, SCOTT L., sales agent, Salt Lake City, Utah. In an April 29, 2015, order, Mr. Williams's application for licensure as a real estate sales agent was denied due to a previous sanction of his real estate license in which he was ordered to pay a civil penalty of \$1500, which penalty has not been paid, and due to his criminal history, including a history of non-compliance with court orders. Case number RE-15-76488

YEE, FENG, sales agent, Saratoga Springs, Utah. In an April 29, 2015, order, Mr. Yee's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-15-76474



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To Ask Us A Question??

Contact us!

Your ideas & comments are important to us.
Submit questions to DREnewsletter@utah.gov,
or call us at (801) 530 6747

Analyzing the Sales and Listing History of Comparable Properties

Recently, a question was posed regarding analyzing comparable sales data when developing an appraisal. The appraiser noted that Utah rules require an appraiser to analyze and report the sales and listing history of the subject property for the three years preceding the appraisal. The appraiser asked if Utah rules also require an appraiser to analyze the sales and listing history of comparable properties for the preceding three years.

Utah Administrative Code R162-2g-502a(1) requires that a person registered, licensed, or certified by the Division comply with the current edition of USPAP and observe the advisory opinions of USPAP.

USPAP Standards Rules 1-4 states that “(w)hen a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.”

USPAP Standards Rules 1-5 states that “(w)hen 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.”

USPAP requires the appraiser to analyze comparable sales and listing data but it does not require a three-year time window for sales of comparable properties. The three-year window for the sale history only applies to the subject property. Instead, the

Requirement with regard to comparable properties is that the appraiser analyze “such comparable sales data as are available to indicate a value conclusion.” The time frame for data analysis on comparables is not specified by USPAP or Utah Code.

USPAP also requires the appraiser under Standard Rules 2-2 (viii) to “summarize the information analyzed” and the comments included with this standard state: “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.”

Advisory Opinion 1 (AO-1) of the Appraisal Standards Board also addresses this issue. AO-1 reiterates the requirement that an appraiser analyze sales of the subject property that occurred within the three years prior to the effective date of the appraisal and that the appraiser analyze pending and recent sales of comparable properties but no time window is specified.

AO-1 recognizes that regulations issued by government regulatory agencies may contain requirements that an appraiser analyze and report sales history information. Utah Administrative Code R162-2g-502a(1)(f) addresses standards of conduct and practice for appraisers. Although the Utah rule is similar to USPAP it is more stringent in that it requires an appraiser to analyze and report the sales and **listing** history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agents, property owner, or other verifiable sources. The rule does not address the sales history of comparable properties.

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In conclusion, in developing a value opinion of market value, the appraiser must analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal. When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion. Appraisers should recognize that although USPAP and Utah Administrative Code do not specify a specific length of time other than “as of the effective date of the appraisal,” for the sales histories of comparable sales; an appraiser’s scope of work and/or appraisal report form may require a longer period of time for the sales histories of comparable sales to be documented, analyzed, and reported.



Appraisal Subcommittee Compliance Review

The Appraisal Subcommittee (ASC) was created to oversee the real estate appraisal process as it relates to federally related transactions as defined in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Title XI’s purpose is to “provide that Federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals are performed in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”

In the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) included amendments to Title XI. As amended, Title XI requires the ASC to monitor

the requirements established by states for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions. In conjunction with the ASC’s efforts to monitor states’ conduct, they periodically perform Compliance Reviews of each state.

The ASC issues Policy Statements to provide States with the necessary information to maintain their Programs in compliance with Title XI. Policy Statements 1 through 7 correspond with the categories that are evaluated during the Compliance Review process and included in the ASC Compliance Review Report. The ASC performed a Compliance Review of The Utah Division of Real Estate’s Appraisal Program May 26-28, 2015.

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- Policy Statement 1 (Statutes, Regulations, Policies and Procedures Governing State Programs)
 - o State Regulatory Structure – The ASC reviewed the Division’s Appraisal Program to insure that Utah has in place policies, practices and procedures consistent with the requirements of Title XI. States are required to maintain an organizational structure for appraiser certification, licensing and supervision. State appraisal regulators are required to have sufficient funding and staffing to meet their Title XI requirements. The ASC ensures that Division requirements for appraisers, as well as for trainee and supervisory appraisers, must meet or exceed the Appraisal Qualifications Board (AQB) Criteria, as required by the Dodd-Frank Act. Title XI mandates that all appraisals performed in connection with federally related transactions must be prepared in accordance with generally accepted appraisal standards (USPAP).
 - o The ASC Compliance Review determined that the Utah Division of Real Estate (UDRE) was in compliance with Policy Statement 1.
- Policy Statement 2 (Temporary Practice)
 - o Title XI requires State Agencies to recognize, on a temporary basis, the certification or license of an out-of-State appraiser entering Utah for the purpose of completing an appraisal assignment for a federally related transaction. The out-of-State appraiser must register with the UDRE and must be issued a temporary practice permit within five business days of receipt of a completed application, or UDRE must notify the applicant of the circumstances justifying a delay.
 - o The ASC Compliance Review determined that the Utah Division of Real Estate (UDRE) was in compliance with Policy Statement 2.
- Policy Statement 3 (National Registry)
 - o All states are required to transmit (at least monthly, although Utah makes such submissions on a weekly basis), to the ASC a roster listing individuals who have received a State certification or license, in addition reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, revocations and suspensions. States are required to submit the Registry fee established by the ASC from individuals who have received certification or licensing. Finally, each State must notify the ASC as soon as practicable if a credential holder listed on the National Registry does not qualify for the credential held.
 - o The ASC Compliance Review determined that the Utah Division of Real Estate (UDRE) was in compliance with Policy Statement 3.
- Policy Statement 4 (Application Process)
 - o AQB Criteria sets forth the minimum education, experience and examination requirements applicable to all States for credentialing of real property appraisers. In the application process, States must, at a minimum, employ a reliable means of validating both education and experience credit claimed by applicants for credentialing. State appraisal regulators must process applications in a consistent, equitable and well-documented manner. Documentation must be provided to support education (both qualifying and continuing education) and experience claimed by applicants (must be USPAP compl-

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- iant) for initial credentialing or upgrade. States must analyze representative samples of the applicant's work product for USPAP compliance for all initial or upgrade applications for appraiser credentialing.
- o The ASC Compliance Review determined that the Utah Division of Real Estate (UDRE) was in compliance with Policy Statement 4.
- Policy Statement 5 (Reciprocity)
 - o Title XI contemplates the reasonably free movement of certified and licensed appraisers across State lines. In order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a policy in place for issuing reciprocal credentials IF:
 - o The appraiser is coming from a State (home state) that is in compliance with Title XI as determined by the ASC; AND
 - o The appraiser holds a valid credential from the home state; AND the credentialing requirements of the Home State (as they exist at the time of application for the reciprocal credential) meet or exceed those of the reciprocal state at the time of application. However a state may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy, but cannot impose additional impediments to issuance of reciprocal credentials.
 - o The ASC Compliance Review determined that the Utah Division of Real Estate (UDRE) was in compliance with Policy Statement 5.
- Policy Statement 6 (Education)
 - o AQB Criteria sets forth minimum requirements for appraiser education courses. This Policy Statement addresses proper administration of education requirements for compliance with AQB Criteria. (For requirements concerning qualifying and continuing education in the application process, see Policy Statement 4, Application Process.)
 - o States must ensure that approved appraiser education courses are consistent with AQB Criteria and maintain sufficient documentation to support that approved appraiser education courses conform to AQB Criteria. State regulators ensure that educational providers are afforded equal treatment in all respects.
 - o States must ensure that distance education courses meet AQB Criteria and that the delivery mechanism for distance education courses offered by a non-academic provider had been approved by an AQB-approved organization providing approval of course design and delivery.
 - o The ASC Compliance Review determined that the Utah Division of Real Estate (UDRE) was in compliance with Policy Statement 6.
- Policy Statement 7 (State Agency Enforcement)
 - o Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period (except for special documented circumstances within one year – 12 months), appropriately disciplines sanctioned appraisers and maintains an effective regulatory program. State regulators must ensure that the system for processing and investigating complaints and sanctioning appraisers is administered in a timely, effective, consistent, equitable, and well-documented manner.

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o Effective enforcement requires that States investigate allegations of appraiser misconduct or wrongdoing, and if allegations are proven, take appropriate disciplinary or remedial action. Dismissal of an alleged violation solely due to an “absence of harm to the public” is inconsistent with Title XI. Financial loss or the lack thereof is not an element in determining whether there is a violation. The extent of such loss, however, may be a factor in determining the appropriate level of discipline.

o States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint. Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

o States are to have “well-documented” records and obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

o The ASC Compliance Review determined that the Utah Division of Real Estate (UDRE) was not in total compliance with Policy Statement 7. They determined that although there had been a significant reduction in the total number of investigations open for more than one year from the Compliance Review two years ago, there remain six investigations that have now been open for more than one year. The ASC made further positive comments regarding a general improvement in investigative reporting and the overall thoroughness of investigations. Overall enforcement has made significant improvement and the ASC expressed confidence that with the progress they have currently observed they would anticipate that at the time of the next Compliance Review, the Division would be in compliance with Policy Statement 7.

The Division was pleased with the results of the recent ASC review, and noted areas in which continued improvement can be made. We wish to thank the Subcommittee Policy Analysts that performed this review for their efforts to inform and improve our appraisal regulatory efforts.



Kagie's Korner

What Can A Loan Originator Do To Help Sell A Property?

(and How Far Can a Real Estate Agent Go in Promotion of Financing Programs for a Property?)

The Division continues to receive enquiries about what a loan officer can do in marketing a property for sale, so I thought we could revisit the ideas presented in a prior Kagie Korner article.

The Division gets calls from both real estate agents and loan officers asking, "What can loan originators do to help sell a property?" Can they co-market the property with the sales agent and help pay for the fliers or website? Can they help a For Sale by Owner (FSBO) seller by printing information about the property and making the information available on their sign? Can they have the contact information for the FSBO seller on their flier?

Co-marketing

There is no specific prohibition against a real estate professional and a loan officer using the same flier to simultaneously market a property and providing financing options. However, doing so can create problems, so you should not take this route without taking some precautions at the outset.

There is a risk of potentially confusing the general public as to which role each licensee plays. The same concern could apply when a loan officer and real estate agent share a website rather than having two separate and unique websites that clearly identify the companies and the professions for which the licensees work. Real estate and mortgage licensee are restricted to only performing in a single licensed capacity in a transaction (Mortgage R162-2c-301a (1)(b)(iv), Real Estate R162-2f-401 (b)(14)). Therefore, licensees must not cross the line in rendering professional services that extend

beyond the boundaries of the licensing capacity that they are conducting in a specific transaction.

The public could contact the mortgage professional to ask questions that pertain to the sale of the property. For example they could be asked questions about the condition of the home, or request assistance in negotiating a purchase agreement, thus placing the loan officer in a position of answering questions or otherwise participating in conduct that would violate the Utah Real Estate Licensing and Practices Act and related administrative rules. On the flip side, the public could contact the real estate agent looking for a rate quote or asking other questions related to specific financing programs and associated costs. Once again, if the agent answers such questions, the agent would be in violation of the Utah Residential Mortgage Practice and Licensing Act and related administrative rules.

The Division recommends that as a best practice having separate advertising would be advisable. Although there is no strict prohibition against combined advertising efforts, mortgage and real estate professionals are cautioned and suggested to have their own individual signs, fliers, and websites, thus making it absolutely clear to the general public which role each licensee plays.

The Division offers this precautionary guidance, which should alleviate potential violations based on the conduct of licensees. For example, let's say fliers in a take 'em box shows information about the home and the real estate agent on one side, and the other side is devoted to the mortgage licensee

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and rate offerings. Since each party is taking up 50% of the advertising on the flier, each party needs to contribute equally the costs of the advertisement (e.g. paper, costs of printing, etc.). If either the real estate agent or the mortgage originator pays for the entire marketing costs, or even subsidizes the costs that should have been incurred by the other party, this could lead to a violation under the mortgage and real estate statutes and rules. This also could be a potential RESPA violation as well. Each licensee needs to ensure they pay the actual costs for their respective co-marketing efforts.

FSBOs

I often get asked what a loan officer can do for a FSBO in order to assist in marketing a property. The answer: nothing. When a loan officer prints or pays for the printing of a FSBO property fact flier—even where the flier contains the seller’s contact information—the loan officer steps across the line. Advertising a property for sale in any manner requires licensure under the Utah Real Estate Licensing and Practices Act.

A loan officer can place a sign on a property, whether it is listed with a real estate agent or is being sold by the owner, as long as the sign and fliers are carefully restricted to marketing the financial information, such as types of loans a prospective buyer may look into in order to finance the purchase of the property.

Finally, can a loan officer place a rider on a real estate agent’s sign? It depends. If the advertising appears that the loan officer may actually be co-marketing/listing the property, then the loan officer could be in violation. If the rider were to be clear that it is an advertisement of loan services only, then it could be acceptable. Again, the rule of thumb applies from above: if the rider makes it difficult for the general public to know who is selling the property or what function each licensee is performing, there may be a violation.

As referenced above, I would like to reiterate that the Real Estate Division has given the following guidance as a best or preferred practice. In order to reduce the possibility of misrepresentation to the public, the Division would advise real estate and mortgage licensees to have separate signage, websites, and fliers. Thus making it clear to the general public which role the individual licensee is performing, and makes it easy to understand who to contact in order to have their questions answered or to request specific professional assistance.



What is a *Lis Pendens*, and Can I Use it to Collect my Commissions?

The Division was recently asked whether a Principal Broker could record a *lis pendens* against a property to help collect commissions. The answer to that question requires an understanding of what a *lis pendens* is, and when the use of a *lis pendens* is appropriate.

What is a *lis pendens*? In latin, it means “pending litigation.” In modern usage, it means a notice of a pending lawsuit that is recorded in the county recorder’s office.

What does it do? The purpose of a *lis pendens* is to give notice to potential buyers, lenders, and other real property interest holders that a lawsuit is currently pending affecting the title to, or the right of possession of, the property.

Why is it important to provide notice? Any buyer, lender, or other real property interest holder who

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acquires an interest in the specified real estate after a *lis pendens* is recorded, takes that interest subject to the outcome of the litigation.

Who can file a *lis pendens*? As a general rule, *lis pendens* are typically filed by the Plaintiff in the underlying lawsuit who is claiming an interest in the real property. In some cases, it will be filed by a Defendant who has filed a counterclaim asserting a property interest. The person's title in the lawsuit is not important. What is important is that the person filing the *lis pendens* must actually be asserting the right to ownership or possession of the property in the underlying lawsuit.

For example, John has signed a contract agreeing to sell his home to Mary. Prior to closing, John decides he no longer wants to move, and cancels the contract. Mary sues John to enforce the contract and files a *lis pendens*. While the lawsuit is pending, John sells his home to George. A year later, the court decides that John breached the contract and that Mary is entitled to enforce the sale. The result is that George loses the property to Mary, and George is stuck trying to get his purchase money back from John.

Do I have to file a lawsuit to use a *lis pendens*?

Yes. By definition, a *lis pendens* gives notice of a pending lawsuit. Without the lawsuit, there is no purpose for the notice.

Will a *lis pendens* prevent the owner from selling or obtaining a loan? While technically a *lis pendens* does not prevent a sale or loan, as a practical matter, most buyers, lenders, and title companies avoid transactions where title to the property in question is clouded by a *lis pendens*.

Can I record a *lis pendens* for any lawsuit involving real estate? No. A *lis pendens* may only be filed where the underlying lawsuit is concerned with the ownership or the right to possess the property. Examples of lawsuits where it would be appropriate to file a *lis pendens* would be a law

suit for specific performance of a real estate purchase contract, a quiet title action, a partition action, or a lawsuit to establish ownership by adverse possession. In each of these examples, it is the title to the property that is at issue in the lawsuit. If a lawsuit only seeks monetary damages and no relief relating to the real estate itself, a *lis pendens* is inappropriate, even though the damages sought may arise from a real estate transaction.

What if someone files an unauthorized *lis pendens*? Even though a *lis pendens* does not create a lien against the property, an improperly filed *lis pendens* may constitute a wrongful lien. Utah Code § 38-9-102(12) defines the term "wrongful lien" and includes a "notice of interest" in its definition. In addition to civil penalties, a person who files a wrongful lien may be sued for slander of title or be named in a quiet title action. A person may also face criminal prosecution because it is a 3rd degree felony to knowingly file a wrongful lien against property.

To answer the question posed to the Division, given the nature and appropriate use of *lis pendens*, it is clear that a Principal Broker typically would not be entitled to file a *lis pendens* to collect a commission. A listing and/or sales agency agreement is a personal services contract between the owner of the property and the real estate broker. The broker agrees to furnish a personal service, that is, his/her marketing efforts, to the owner in exchange for monetary payment for those efforts. Even if the broker sues the property owner to recover his commissions, unless the broker can somehow claim an ownership interest in the property, it is not appropriate for the broker to file a *lis pendens*.

This article is not intended to be specific legal advice. It only provides general legal information. Because of its effect on the marketability of title, one should always consult with a licensed Utah attorney to determine if a *lis pendens* is appropriate in a particular matter.



Appraiser Experience Log -NEW Electronic Spreadsheets-

Thank you Ron Smith & Lisa Manning!!

Beginning January 1, 2015, revised appraiser experience hour rules went into effect. Appraiser candidates now receive experience hours for specifically performing individual tasks they engaged in while completing their appraisal assignments. For example, instead of receiving a standard 5 hours for every single family dwelling appraisal with gross living area less than 4,000 square feet, now candidates receive experience hours based upon the tasks they actually perform on each appraisal assignment.

For example, Administrative Rule R162-2g-601 - Appendix 1 - Reflects that a candidate will now receive up to 10 hours of experience credit (however **the anticipated average number of hours awarded would be 7.5 hours per assignment**)

<u>Task</u>	<u>Hours</u>
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5

You can see from this new experience schedule that experience hours are awarded based on the performance of specific tasks rather than an inflexible 5 hours per assignment. You probably can also

recognize that there could be significant variation between the experience hours performed for different appraisal assignments. Tracking this accumulating appraisal experience could quickly become an accounting challenge!

The greater flexibility in experience time provided, as well as an increase in overall total amount of time that can be awarded reflects the Appraiser Board's desire to aptly recognize the variation in appraisal assignments and increasing time requirements to competently complete the increased scope of work requirements for appraisal products in our market today.

Appraiser experience performed before 12/31/14 will continue to be reported on the "Pre-2015 Experience Log."

In early 2015, when changes to the experience log went into effect, Ron Smith from the Utah Tax Commission, former Appraiser Board Chair, and Lisa Manning, Chief Deputy Assessor for Davis County, recognized that with the new experience rules going into effect a spreadsheet that incorporated the new appendices would be critically important for appraisal candidates and Division staff to document appraisal experience in candidate applications.

After many countless hours of work, these new Excel Spread sheets have been made available to all Utah appraisal candidates thanks to the efforts of Ron Smith & Lisa Manning. In addition, the Tax Commission has prepared a two hour continuing education course entitled "Understanding the Utah Appraiser Experience Log" (AC150406). This

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course is recommended to any appraiser candidate (mass or fee), to help the candidate and their supervisor(s) on the appropriate use of these spread sheets in tracking and documenting appraisal experience.

Appraiser experience for work performed on or after 1/1/15 will require submission on either the new “**Fee**-Licensed/Certified Residential or /Certified General Appraiser Experience Log,” or the new “**Mass**-Licensed/Certified Residential or / Certified General Appraiser Experience Log” (depending on whether the appraiser candidate performed work as a fee appraiser, mass appraiser, or a combination). Both of these new spreadsheets can be found on the Division’s website. Excel spreadsheets incorporate information from each of the three appraiser experience appendices included in R162-2g-601.

The Division thanks Ron & Lisa for their generous work to benefit appraisal candidates and the Division in the documentation of appraiser experience.



CARAVAN 2015

Throughout the months of April and May the Division participated in nine CARAVAN presentations from Logan on the North to St. George on the South. Large audiences of licensees attended in Provo, Layton, Park City, Logan, and St. George. Smaller, more relaxed gatherings occurred in Vernal, Moab, Richfield, and Cedar City.

In his CARAVAN presentation, Jonathan Stewart, the Director of the Division of Real Estate, primarily spoke about legislative changes that went into effect in May of this year. The topics presented were outlined in his Director’s Message in the 1st Quarter Real Estate Division Newsletter http://www.realestate.utah.gov/newsletters/newsletter_q1-2015_3.pdf.

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Mark Fagergren, the Director of Licensing & Education, discussed efforts by the State of Utah and the Division of Real Estate to vigorously prevent electronic hacking of licensees' secure and private information.

He detailed significant shifts in licensing numbers occurring as a result of the national and state recession experienced in 2008.



	<u>Real Estate</u>	<u>Mortgage</u>	<u>Appraisal</u>
<u>2007</u>	24,757	9,964	1,918
<u>2010</u>	15,116	3,148	1,906
<u>2015</u>	18,500	4,301	1,403

Mark covered several real estate issues that have grown in frequency and severity over this past year. These topics included practicing as a real estate licensee despite their license having expired, brokers paying compensation to expired licensees, licensees receiving compensation directly from a client (not their broker), and real estate licensees not understanding agency disclosure responsibilities.

Mark discussed Administrative Rule R162-2f-401a that categorizes affirmative duties required to be performed by real estate licensees **in all transactions**:

1. Real estate licensees are required to **create** a written agency agreement which defines the scope of the licensees agency between themselves and the person(s) they are representing (seller(s), buyer(s), tenant(s), or buyer(s) and seller(s) when acting as a limited agent);
2. Prior to executing a binding agreement (REPC or lease), real estate licensees must execute a written disclosure to unrepresented parties that **discloses** the licensee's agency relationships with individuals they represent or do not represent in the transaction; and
3. In the sales agreement (REPC) or lease agreement, real estate licensees must **confirm** the agency agreement that was previously executed between licensees and represented or unrepresented parties to the transaction.

Mark further discussed the surge in real estate broker applications coming to the Division. He reminded attendees that broker experience points cannot be claimed for the work of other team members or spouses. Applicants must divide the experience points allowed per transaction by those licensees who contractually participated in the transaction(s). Broker candidates can only receive experience points when their name is placed on the transaction's agency contract **and** purchase contract (REPC) or lease. Broker applicants

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must document three years, full time, active experience. The broker's signature is required on a prospective broker's experience transaction logs. These records need to be documented and verified by the broker, not routinely signing whatever a broker candidate places in front of the broker. The signing of broker candidate affidavits is a serious responsibility.

Mark discussed several issues that were directed to appraisal licensees. He reminded CARAVAN attendees of the Supervisory Appraiser & Trainee 6-hour course that includes a combined curriculum of AQB and Utah Appraiser Board materials. Trainees will not receive experience credit for appraisals performed after 1/1/15 unless both the Trainee and the Trainee's supervisor(s) have completed this course. There are currently four different providers of this course and any appraiser (not just Trainees and their Supervisors) could benefit from the course. Appraisal CE is awarded to all attendees of the course.

In addition, Mark reminded all appraiser candidates that they will now be fingerprinted in conjunction with any initial license application or any license upgrade.

Appraisers were informed about the new appraiser experience logs that have been made available to appraiser candidates. All applications for appraisal credentials must now include a record of their experience documented on the "Pre-2015 Experience Log" for work that occurred before 1/1/15, and either the "Fee Experience Log" or the "Mass Experience Log" for work performed after 1/1/15. Additional information about these new appraisal experience documentation spreadsheets can be found in this same newsletter. Please refer to the article on page 24 entitled "Appraiser Experience Log – NEW Electronic Spreadsheets".

Mortgage licensees learned of an additional method of qualifying to become a Lending Manager in Utah. This new qualification method has been adopted to meet the needs of experienced supervisors of mortgage loan originators that have not been primarily originating loans within the past five years. The Mortgage Commission created this application option in an attempt to recognize that individuals who have extensive lending experience but have been primarily supervising the lending activities of other MLOs (rather than personally originating), should be provided a narrow avenue whereby they too could become LMs. This third Lending Manager application method involves documenting that a LM candidate has directly supervised at least 5 mortgage loan originators for at least 10 years (within the past 12 years), and the LM applicant must also have originated at least 15 mortgage loans (within the past five years).

Mark explained that lending manager applicants may be given Division approval to take LM prelicense education & testing, BEFORE verification of the applicant's experience by the Division (however the applicant assumes all risk of time and expenses without the assurance of experience approval). Why allow LM candidates to take prelicense education & testing BEFORE submitting their qualified experience to become a LM? Individuals (primarily working for depository institutions) may have been reluctant to seek documentation of their loan origination experience (to become a non-depository LM), because it might alert their current supervisor or employer of their intention to eventually quit their current employment. The option of allowing LM candidates to receive their education & testing before documenting their work experience was adopted to accommodate these situations, and to minimize stress of their employment transition.

Finally, Mark discussed the new TRID disclosure requirements that are being introduced by the CFPB for mortgage loan applications on or after October 1, 2015. Director Stewart wrote a detailed article in this newsletter on these TRID disclosure requirements. His article can be found on page 1 of this newsletter.

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Jeffery Nielsen, the Chief Investigator for the Division, also spoke to attendees of CARAVAN 2015 about some of the investigative trends in the three industries which are regulated by the Division.

Appraisal Trends

Jeff started by discussing some changes to the GSE guidelines for appraisals. Specifically discussed was a change involving Fannie Mae guidelines regarding the 15%/25% adjustment guidelines. Fannie Mae has removed this requirement due to appraisers under adjusting comparable sales, which was causing values to be over inflated (for further information, please review the 4th Quarter 2014 Newsletter). Fannie Mae did not intend for the guideline to be a hard and fast rule, but wanted disclosure to show why it was necessary to go past the guideline. As with most appraisal issues, disclosure can go a long way to avoiding any problems.

Most of the issues discussed are not new and exciting issues, but are things to consider when appraising. First, appraisers need to be aware of any limitations placed on their assignments by intended users or clients. For example, if an appraiser is requested to only use comparable sales sold in the past 90 days, but better comps are available past the 90 day time frame, the appraiser will need to consider if the assignment results will not be credible based on the request. An appraiser needs to set the scope of work for an assignment and to be aware of whether credibility will be affected by the assignment condition. If that is the case, the scope of work needs to be expanded, or the appraiser needs to withdraw from the assignment.

Another issue seen in appraisal cases involves not having support for opinions, conclusions, or adjustments in the work file or in the report. The Record Keeping Rule and SR 2-2 have requirements that the support be in the work file, and the support needs to be summarized in the report. As with before, disclosure of the information showing support will assist the appraiser with this issue.

The Division has also noticed issues when it comes to divorce appraisals and tax appeal appraisals. The Division has noticed that appraisers seem to be influenced on some level by the statements or information provided by their clients in these matters. Appraisers were reminded they need to be the independent party in the appraisal process. Appraisers need to review the data and come to their own conclusions, and should avoid allowing other people and their goals to influence the appraisal process and results.

Lastly, the issue of reconciliation was addressed. It has been noted that a large number of appraisals do not follow both steps of reconciliation. Appraisers need to ensure they reconcile the data and analysis within the individual approaches (e.g. explain how value was determined using the range of adjusted sales values for comps in the sales comparison approach), and then to reconcile the data and analysis between the three approaches to value. It was noted that if an appraiser is not using one or two of the approaches to value, a statement is needed to explain the exclusion(s).

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Mortgage Trends

One of the issues noted by Division investigators over the last couple of years is a lack of audits being done by PLMs on their files. Division rules require a PLM to perform pre-closing and post closing audits of at least 10% of all loan files. It was also suggested to keep proof of what files were reviewed and what was reviewed in the files so the PLM can explain these points to the Division if ever audited/investigated.

The importance of auditing was shown through a case example of a PLM who had a stack of files under their desk when the Division was conducting an investigation based on an allegation of documents being altered in the loan files. The files, which were to be audited by the PLM but had not at that point, showed proof of the alterations to the documents (e.g. white-out on documents, etc.) which would have been found through the PLM audit. If the PLM had audited, this issue could have been resolved before the Division had to investigate and take action for the failure to audit.

Tied to this issue, the trend of using white-out, copy and paste, and cut and paste issues are making a strong comeback in Division investigations. The Division is seeing a number of complaints about altered documents, and the Division has been finding proof of alteration techniques being used. This is not a new issue, but many

of these problems had been dormant for the last few years. These violations are serious, and will be handled as such.

When concluding the mortgage portion, a couple of suggestions were offered. First, the Division has seen issues regarding locking rates cause issues with licensees. The Division would suggest using a rate lock sheet to prove when and at what rate a client's loan was locked. If the client wants to float a rate, the form should note that as well, and then show the rate lock information once the rate is locked. This form can serve as a protection to loan officers and their clients.

Second, if a mortgage licensee is looking to wind down a business or switch companies, they need to be aware of issues involving working for two companies at one time. In the prior Division newsletter, the staff wrote an article regarding things to consider when in this situation. Licensees need to be sure

to avoid being in a situation where they work for multiple companies at the same time.

Real Estate Trends

The first trend noted for real estate had to do with commercial real estate complaints. Historically, the Division has not received a lot of commercial complaints. During the last year or so, a fair number of commercial complaints were filed with the Division. One of the common issues noted in these cases are a lack of documentation in commercial brokerage files. For example, copies of agency agreements and limited agency disclosures were almost non-existent in most of the commercial files reviewed. As was noted in Mark Fagergren's discussion on agency issues and lack of documentation to prove experience when qualifying to become a broker, this is also an enforcement issue since these documents are a requirement under the statutes and rules.



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A theory on the lack of documentation has to do with the lack of a trade organization, such as the UAR, for the commercial side. Whereas the UAR's attorneys draft forms for agents to use, commercial brokers seem to retain their own attorneys to draft contracts and other forms. It seems like commercial brokerages have not seemed to recognize the requirement to establish agency in writing prior to a binding contract being executed, but it is a requirement. Also noted was a concern under the Statutes of Fraud for Utah: if commission agreements are not in writing, the commission agreement may be void.

Another disturbing trend over the last 12 to 18 months is an "epidemic" of agents and brokers who allow their licenses to expire or go inactive, yet they continue to practice real estate. With that said, the Division has also noticed a number of brokers who continue to pay those licensees even though they do not have an active license.

The reason for the agent being either expired or inactive range from technical reasons or forgetting to renew, to what appears to be a complete disregard to maintaining a license. Part of the issue the Enforcement Section is seeing in these cases is trying to determine a fair sanction against the expired agent's license. For example, should the Division fine an agent for all commissions earned

during the time they were expired? If an expired licensee earned \$60,000 in commissions while expired for eight months, should the Division fine the agent \$60,000?

The Division has struggled with coming up with an appropriate remedy, and is currently



looking at various ideas with the Real Estate Commission to find the best way to handle the issue. The main take away from the discussion was to ensure you have an active license with the Division, especially when renewing or changing companies. Also, brokers really need to ensure their licensees are active and associated with the broker prior to paying any commissions. Of course, all

of this can be done through a RELMS account, or simply looking at the Division's database found on the Division's website.

Besides the trends, there is a situation that has occurred over the last year or so that warrants some discussion. This situation is shown by a couple of examples. First, an agent is going out of town for a weekend, and they ask a friend, who is also licensed, to show a listed home over the weekend and pass along any offers once they return the following week. Their friend does not work for the same brokerage, but agrees to help out their friend.

Another example is in regard to short sale negotiators. Sometimes agents build a reputation as being a good short sale negotiator, so other agents from other brokerages decide to retain the negotiators services to assist in a short sale.

Both of these examples have something in common: the need to have a sub-agency agreement in place prior to assisting the people from other brokerages. Since agency has been established between one of the licensees and the client in these examples, and now an agent from a different brokerage is going to assist in activities for that client, sub-agency is needed to allow the other licensed person to assist. Sub-agency needs to be established in writ-

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ing between the two brokers involved, and it needs to clearly define the scope of activities the sub-agent will complete.

Outside of trends, Jeff also spoke about risk mitigation factors for brokers to consider when operating their brokerages. Brokers, by statute and rule, are required to supervise their affiliated licensees. But how does a broker avoid a failure to supervise violation when an affiliated licensee violates the statutes and rules? Division rules explain how this is possible by building a safe harbor to protect the broker.

First, brokers were encouraged to ensure they review their licensees' transactions by reviewing files and contracts. A discussion of reviewing the contracts pre closing versus post-closing was had. One of the elements to building a safe harbor is to correct any problems learn about violations and to prevent or mitigate the damage. It is certainly more difficult to correct the issues and prevent damage when reviewing transactions post-closing compared to pre-closing.

Another factor to consider is having written policies and procedures. According to the safe harbor rule, this is an element needed to help



build the safe harbor. If a broker has well drafted policies and procedures, and ensures licensees review them often and maintains proof of such, that can go a long way in showing that a broker is attempting to ensure their agents know and understand not only the Division's requirements, but also any requirements the broker may have when trying to supervise the agents.

The real estate portion was concluded by going over a short sale investigation that was recently concluded by the Division. Facts of the case were discussed, and it was shown where a number of red flags showed problems with

the transaction in question. One issue noted in the case, which has also been seen independently in other investigations, has to do with the agent and brokerage names used in section five of the REPC. In the case at hand, the transaction involved limited agency with the brokerage. In section five of the REPC, different brokerage names were listed in order to make it appear that two different brokerages represented the parties to the transaction. This was done in an attempt to get the short sale lender to pay the full negotiated commissions, whereas lenders will sometimes reduce the commissions paid if the same brokerage is involved on both sides of the transaction. Plain and

simple, and this is misrepresentation/fraud. Take care so as to avoid a practice like this in order to mislead people or entities into paying more than they would otherwise agree to pay. This in and of itself could lead to a sanction against a licensee.

