



Second Quarter 2016

Director's Message

Email Wiring Sc@m

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Jonathan Stewart

You and your clients should all be aware of a scam that has been around since at least 2012, but is recently surfacing more often. In the last two months, both the Federal Trade Commission (FTC) and National Association of Realtors (NAR) have put out alerts about a wiring instruction scam that has caused practitioners and members of the public to lose earnest money, closing costs, down payments, and in some cases, loan proceeds.

In September 2015 the Association of Real Estate License Law Officials released a scam update which highlighted this con, and we had a small article in our own 2015 third-quarter newsletter, but as this is happening more often, I feel it necessary to focus more attention on the issue.

This scam starts with a con artist gaining access to an email account by either hacking or obtaining login credentials through a phishing scheme. Once they have access to an email account, they monitor emails about a pending real estate transaction until the



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transaction is about to close. Typically within 24 hours of settlement, they will use the email account to send new wiring instructions to the buyer, seller, title or escrow agent, lender, real estate agent or broker, etc. The new wiring instructions often have the money going to a bank account outside of the country. By the time the fraud is recognized, the money has already been withdrawn from the fraudulent bank account and it is too late to locate the criminal.



In a 2013 blog post by Mason Title & Escrow Company, attorney Artin Betpera wrote about the risks of using free email accounts. Specifically, Betpera wrote:

“these free email accounts may have security vulnerabilities that substantially increase the risks of fraud and theft in real estate transactions. While free e-mail accounts offer both convenience and portability, many lack firewalls, virus protection, and another security apparatuses of company-issued e-mail accounts.”¹

We recommend never using a free email account to discuss work and information regarding the finances involved in a transaction. The potential risk could be the loss of hundreds of thousands of dollars.

All parties involved in a transaction should be hesitant to trust all communication they receive via email, especially if a late-arriving email contains information that changes something that was originally agreed upon. Also, be aware that criminals accessing email accounts have ways of making emails sound legitimate. Scott Talkov, an attorney in Riverside California, wrote the following about a scammer’s ability to fake an email:

“If the scammer has an ability to read all emails with a buyer, they may be able to convincingly assume the identity of a party to the transaction, picking up where the last email left off (‘I’m glad the termite inspection went well. The new wire instructions are attached.’). With the wiring party having no reason to believe the email to be fake, the wiring party may act on an email without any further confirmation.”²

Recipients of emails with new wire information should verify the information by contacting the sender by telephone. Do not call a number that is found within the email; instead, use a number that you have independently verified.



As always, prevention is the best way to handle scams like this email con. There are several prevention tips suggested by the NAR and the FTC. A May 2015 NAR alert states:

“The best line of defense against fraudsters is to make sure that all parties involved in a real estate transaction implement security measures before a cyberattack occurs. These measures include the following:

- Never send wire transfer information via email. For that matter, never send any sensitive information via email, including banking information, routing numbers, PINS, or any other financial information.
- Inform clients from day one about your email and communication practices, and alert them

1 Betpera, A. (2013). Hackers and Mortgage Fraud: The Perils of Using Free E-Mail Providers [Blog post]. Retrieved from: <http://www.masontitle.com/hackers-and-mortgage-fraud-the-perils-of-using-free-e-mail-providers/>

2 Talkiv, S. (2014). Warning: Email Wire Fraud Scam Hitting Real Estate Industry [Blog post]. Retrieved from: <http://www.rhlaw.com/blog/warning-email-wire-fraud-scam-hitting-real-estate-industry/>

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to the possibility of fraudulent activity. Explain that you will never send, or request that they send, sensitive information via email.

- Prior to wiring any funds, the wiper should contact the intended recipient via a verified telephone number and confirm that the wiring information is accurate. Do not rely on telephone numbers or website addresses provided within an unverified email, as fraudsters often provide their own contact information and set up convincing fake websites in furtherance of their schemes.
- If a situation arises in which you have no choice but to send information about a transaction via email, make sure to use encrypted email.
- Security experts often recommend “going with your gut.” Tell clients that if an email or a telephone call ever seems suspicious or “off,” that they should refrain from taking any action until the communication has been independently verified as legitimate. When it comes to safety and cybersecurity, always err on the side of being overly cautious.
- If you receive a suspicious email, do not open it. If you have already opened it, do not

click on any links contained in the email. Do not open any attachments. Do not call any numbers listed in the email. Do not reply to the email.

- Clean out your email account on a regular basis. Your emails may establish patterns in your business practice over time that hackers can use against you. In addition, a longstanding backlog of email may contain sensitive information from months or years past. You can always save important emails in a secure location on your internal system or hard drive.
- Change your usernames and passwords on a regular basis, and make sure your employees and licensees do the same.
- Never use usernames or passwords that are easy to guess. Never, ever use the password “password.”
- Make sure to implement the most up-to-date firewall and anti-virus technologies in your business.”³

On March 18, 2016, the FTC and Realtors® issued a warning and additional tips for avoiding becoming a victim:

- Do not email financial information. It’s not secure.

- If you’re giving your financial information on the web, make sure the site is secure. Look for a URL that begins with https (the “s” stands for secure). And, instead of clicking a link in an email to go to an organization’s site, look up the real URL and type in the web address yourself.
- Be cautious about opening attachments and downloading files from emails, regardless of who sent them. These files can contain malware that can weaken your computer’s security.
- Keep your operating system, browser, and security software up to date.⁴

When you understand a threat, you can do more to protect yourself and your clients from becoming victims. Please educate those you work with and your clients to be more cautious with financial information.

³ Edgerton, J. (2015). ALERT: Wire Fraudsters Targeting Real Estate Transactions. [Blog Post]. Retrieved from: <http://speakingofrealestate.blogs.realtor.org/2015/05/19/alert-wire-fraudsters-targeting-real-estate-transactions/>

⁴ Tressler, C. (2016). Scammers phish for mortgage closing costs. [Blog Post] Retrieved from: <https://www.consumer.ftc.gov/blog/scammers-phish-mortgage-closing-costs>

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In the SPOTLIGHT Desha Pages

Meet Desha! It has been a year since Desha joined our mortgage licensing team. She has been employed in the past in the health industry as well as business administration. Prior to the DRE she was employed for 5 years at the immunization clinic for the Davis County Health Department. Here's what Desha has to say about her job here at the Division:

"I enjoy working at the DRE because there is plenty to learn with rules, statutes, and legislation. There's never a dull moment. Helping someone to understand how to license with the state of Utah, start up a company in the mortgage industry, or clarifying a rule or requirement can be a lot of fun. My colleagues at the DRE are great to work with each day. They really make work enjoyable.

I enjoy the interaction with people. Public service is a great place to inform and educate people on various subjects. I think it is important to work with a cheerful attitude, to

be courteous to others while trying to inform or enforce correct information. I find people to be grateful for these qualities."

Desha has been happily married for 19 years. Her husband, Alain, immigrated from France and became a US Citizen. Even though France is pretty cool, he is grateful for the freedom and opportunities that come at any age in the United States. Desha is fluent in French and has lived in and traveled to France and Switzerland. Her childhood years were spent in Kaysville, Utah and grew up during her teenage years in St. Louis, Missouri. She loves the midwest! She and her husband currently reside in Clinton, Utah. Sorry dog fans, Desha's a cat person! She loves to explore new places from local parks and restaurants to Oregon beaches, National Parks, metros and shopping Paris. Her weekends are spent outdoors hiking, camping, swimming, gardening or just spending time outdoors.



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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.

APPRAISAL

RICHARDS, HILARY R., certified residential appraiser, Ogden, Utah. In a stipulated order dated May 25, 2016, Mr. Richards admitted to having failed to analyze comparable sales data and to employ recognized methods and techniques necessary to produce a credible appraisal in violation of USPAP standards. Mr. Richards agreed to pay a civil penalty of \$1500. Case number AP-15 74453

MORTGAGE

HALE, RONNIE E., mortgage loan originator, Riverton, Utah. In a March 1, 2016 order, Mr. Hale's license was granted and placed on probation until he has formalized a plan to satisfy his tax arrearage. Case number MG-16-81130

NEUMAN KINNEY, ROBYN W., mortgage loan originator, Orem, Utah. In a March 3, 2016 order, Mr. Neuman Kinney's license was granted and placed on probation until he has formalized a plan to satisfy his tax arrearage. Case number MG-16-81164

YOCUM, KARI LYNN, mortgage loan originator, Costa Mesa, Cal-

ifornia. In an April 5, 2016, order, Ms. Yocum's license was granted and placed on probation for the initial licensing period for criminal history. Case number MG-16 82026

REAL ESTATE

AGUINAGA, ANDRE ABEL, sales agent, Chubbuck, Idaho. In an April 5, 2016 order, Mr. Aguinaga's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16 81876

BEECH, PAMELA J., sales agent, St. George, Utah. In a May 4, 2016 order, Ms. Beech's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-82849

BERRYESSA, BRADY, sales agent, Centerville, Utah. In a March 15, 2016 order, Mr. Berryessa's license was granted and placed on probation for one year due to criminal history. Case number RE-16-81441

BILLS, TRISTAN DERRICK, sales agent, Salt Lake City, Utah. In a March 3, 2016 order, Mr. Bill's license was granted and

placed on probation for the initial licensing period due to criminal history. Case number RE-16 81175

BLAS, HENRY, sales agent, Salt Lake City, Utah. In an April 13, 2016 order, Mr. Blas's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-82108

BRAY, MAURI, sales agent, Clinton, Utah. In an April 13, 2016 order, Mr. Bray's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82112

BROOKS, EMILEE, sales agent, Clearfield, Utah. In a May 6, 2016 order, Ms. Brooks's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82970

CIULUPA-KAPLUN, DIEGO, sales agent, Taylorsville, Utah. In a May 11, 2016 order, Mr. Ciulupa-Kaplun's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-83083

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COBB, MELANIE ANNE, sales agent, St. George, Utah. In a March 22, 2016 order, Ms. Cobb's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81588

CORNFORTH, CRAIG, D., sales agent, Salt Lake City, Utah. In an April 5, 2016 order, Mr. Cornforth's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-81875

COYLE, TERRY JAMES, sales agent, Sandy, Utah. In an April 13, 2016 order, Mr. Coyle's license was granted and placed on probation for one year due to criminal history. Case number RE-16-82119

CURTIS, RIKKI, sales agent, Sandy, Utah. In an April 13, 2016 order, Ms. Curtis's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-82097

EASTHOPE, VICKEY, sales agent, Centerville, Utah. In a March 19, 2015 order, Ms. Easthope's license was granted and placed on probation due to the previous sanction of her license to practice as a massage therapist. The sanction included the surrender of her massage therapist license to the Utah Division of Professional Licensing. The Division of Real Estate order pro-

vided that Ms. Easthope's sales agent license would be automatically revoked if she were to plead guilty to criminal charges pending at the time. On March 15, 2016, Ms. Easthope pleaded guilty to unlawful conduct in her massage practice and voyeurism. Her sales agent license was then revoked. Case number RE-15-74867

EDWARDS, MERRILL, sales agent, Murray, Utah. In a March 22, 2016 order, Mr. Edwards's license was granted and placed on probation for the initial licensing period and until his child support lien is satisfied. The probation was due to criminal history and unpaid child support obligations. Case number RE-16-81577

ENGLISH, ASHLEE MARIE, sales agent, Salt Lake City, Utah. In a May 6, 2016 order, Ms. English's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82971

HALL, JONATHAN, principal broker, Bluffdale, Utah. In a stipulated order dated May 18, 2016, Mr. Hall admitted to having: 1) failed to inform sales agents affiliated with his brokerage that his license had expired; 2) failed to disclose a pending investigation by another division within the Utah Commerce Department when he applied for the renewal of his li-

cence; and 3) to acting as a principal broker when he was not licensed to do so. Mr. Hall admitted that his conduct was in violation of Utah law and administrative rule. Mr. Hall agreed to pay a civil penalty of \$5,000 and to complete seven additional hours of continuing education. Case number RE-13-67389

HELM, TREVOR J., sales agent, Eagle Mountain, Utah. In a March 22, 2016 order, Mr. Helm's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81584

HENNINGER, BRANDI, sales agent, Midvale, Utah. In an April 22, 2016 order, Ms. Henninger's license was renewed and immediately suspended for 30 days and then placed on probation for the remainder of the renewal period due to repeated criminal conduct while she was on probation. Case number RE-16-82464

JACKSON, WILLIAM PAUL, sales agent, Midvale, Utah. In a May 9, 2016 order, Mr. Jackson's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82992

JOHNSON, ALEX W., sales agent, Sandy, Utah. In a March 4, 2016 order, Mr. Johnson's license was granted and placed on probation for the initial licens-

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ing period due to criminal history. Case number RE-16-81186

KING, CALEB CLINTON, sales agent, Eagle Mountain, Utah. In a March 22, 2016 order, Mr. King's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81593

LARA, GUSTAVO, sales agent, North Ogden, Utah. In a May 11, 2016 order, Mr. Lara's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-83080

LESCOE, MELISSA JENNY, sales agent, West Jordan, Utah. In a March 30, 2016 order, Ms. Lescoe's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81712

MILLER, DARREN, sales agent, Lehi, Utah. In a March 25, 2016 order, Mr. Miller's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81641

NIELSON, GARY C., principal broker, Bountiful, Utah. In an April 13, 2016 order, Mr. Nielson's license was renewed and placed on probation during the pendency of criminal proceedings. Case number RE-16-82100

NOBLE JAMES, sales agent, West Jordan, Utah. In a May 10, 2016 order, Mr. Noble's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-83038

ONG, CHERYL, sales agent, Murray, Utah. In a stipulated order dated March 16, 2016, Ms. Ong admitted to having failed to properly disclose the name of her real estate brokerage in advertising. Ms. Ong agreed to pay a civil penalty of \$150. Case number RE-14-70951

PAGE, ADAM MATTHEW, sales agent, Salt Lake City, Utah. In a May 6, 2016 order, Mr. Page's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82964

PARKER, RONALD CHRISTOPHER, sales agent, Layton, Utah. In a March 18, 2016 order, Mr. Parker's application for licensure as a real estate sales agent was granted and placed on probation and with restrictions due to criminal history. Case number RE-16-79586

PHILLIPS, DANNY MATTHEW, sales agent, Draper, Utah. In an April 22, 2016 order, Mr. Phillips's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82472

ROLLER, CONNIE K., sales agent, Salt Lake City, Utah. In a stipulated order dated April 20, 2016, Ms. Roller agreed to the revocation of her license to practice as a real estate sales agent. Case number RE-15-76297

ROYALL, SCOTT W., principal broker, Cottonwood Heights, Utah. In a stipulated order dated March 16, 2016, Mr. Royall admitted to acting as a real estate broker during a period of time when his license had expired and prior to it being reinstated, acts which are in violation of Utah law. Mr. Royall agreed to pay a civil penalty of \$1,000. Case number RE-14-69117

SEEGMILLER, JESSICA, sales agent, Sandy, Utah. In an April 13, 2016 order, Ms. Seegmiller's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82122

SHARP, STEPHANIE ANN, sales agent, West Jordan, Utah. In an April 25, 2016 order, Ms. Sharp's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82490

SHAW, JAMES R., sales agent, Sandy, Utah. In a March 22, 2016 order, Mr. Shaw's license was renewed and placed on probation for the renewal period due to sanctions to another profes-

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sional license held by Mr. Shaw. Case number RE-16-81586

SINGH, ARJUN, sales agent, South Jordan, Utah. In a May 12, 2016 order, Mr. Singh's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-1682672

STAIR, GENEVA ELIZABETH, sales agent, Holladay, Utah. In an April 5, 2016 order, Ms. Stair's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81869

STELTER, EVAN K., sales agent, Moab, Utah. In an April 22, 2016 order, Mr. Stelter's license was renewed and placed on probation for the renewal period due to sanctions to another professional license held by Mr. Stelter. Case number RE-16-82468

STODDARD, PAUL CHARLTON, sales agent, Woodcross, Utah. In a May 11, 2016 order, Mr. Stoddard's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-83078

TAYLOR, KORTNEE JILL, sales agent, St. George, Utah. In a March 30, 2016 order, Ms. Taylor's license was granted and placed on probation for one year due to criminal history. Case number RE-16-81710

VOORHEES, DANIEL, sales agent, Roy, Utah. In a May 6, 2016 order, Mr. Voorhees's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-82968

WALLACE, CAROLINE CONSTANCE, sales agent, Holladay, Utah. In a March 25, 2016 order, Ms. Wallace's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81644

WARDLE, BRETT, sales agent, Sandy, Utah. In an April 29, 2016 order, Mr. Wardle's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-82755

ZANDER, ZACHARY ARTHUR, sales agent, West Jordan, Utah. In an April 5, 2016 order, Mr. Zander's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81877

TIMESHARE

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

Personnel Changes In the Records Section

The records section of the Division of Real Estate is charged with the critical task of filing, maintaining, and, when necessary, retrieving the many records that are regularly being created and updated here at the Division. Technology helps us to accomplish this task, but it is only through the dedicated efforts of section employees that records are available when needed.

Over the last few months, the records section has seen significant personnel changes. Two of our long-term employees recently retired (see previous newsletter articles on the retirement of Renda Christensen and Allyn Stutsman). Amber Nielsen, formerly the scanning technician, was promoted to Board Secretary and we hired Faruk Halilovic as the scanning technician. Chrishel James, previously employed by the Division of Securities, was hired as the Enforcement Secretary. Chrishel also handles all of the transfers of files to and from State Archives.

We welcome Faruk and Chrishel to the records section of the Division of Real Estate. We look forward to working closely with them in the coming months and years. We appreciate Amber, Faruk, and Chrishel for their commitment to the Division, including making sure our records are organized and accessible.

Kagie's Korner

COLD Calls

from an Unlicensed Assistant or Call Center

- Van Kagie, Investigator

The Division continues to receive calls from licensees who would like to either hire an unlicensed personal assistant or a call center to make out bound calls/cold calls to For Sale by Owners, or to property owners of expired listings. These calls made on behalf of the agent are in hopes of procuring a client.

The answer is a resounding NO! In order to make a cold call, the statutes and administrative rules require the person making the calls to be licensed. An unlicensed assistant can only make a return call to a prospective client in order to set up a meeting with a licensee if the contact has been initiated by the prospect and not by the unlicensed assistant. According to statute and administrative rule, an unlicensed person cannot engage in any activity calculated to secure a prospect for a real estate transaction.

The licensee who hires an unli

censed person with the permission of their principal broker is responsible for supervising the unlicensed person's activities and must ensure that the unlicensed assistant does not cross the line by doing any activity which would require a license. With that said, a principal broker or branch broker is responsible to supervise all activities of both licensed and unlicensed staff associated with the office. In a situation where a licensee hires the assistant, both the broker and licensee can be held accountable by the Division if the unlicensed personal assistant performs any work for which a real estate license is required.

In this same line of thought, call centers utilizing unlicensed staff should not be used to solicit new clients.

I would also like to refer you to the following Kagie's Korner articles for a review of what an unlicensed personal assistant can and cannot do:

[2009 3rd Quarter](#) → What can a Real Estate Agent have an Unlicensed Personal Assistant do?

[2011 4th Quarter](#) → Unlicensed Personal Assistants.

These articles can be found on the Division's website. If you have any further questions regarding this or the past articles I recommend that you talk with your principal broker for help in understanding what an unlicensed individual can do to help you in your real estate activities.



ENFORCEMENT ISSUES

- Jeff Nielsen, Chief Investigator

ESCALATION CLAUSES: A VIOLATION?

On a number of occasions, real estate licensees have contacted the Division or filed complaints about other agents using escalation clauses in purchase contracts. Based on some of the questions and concerns expressed, the Division believes an article to address this issue is warranted.

First, for clarification, what do we mean by an escalation clause? In a purchase contract, a buyer will offer a specific purchase price. In an addendum to the contract, the buyer adds a provision that the buyer is willing to pay X amount more than any other higher offer, with a cap on the maximum purchase price, as long as proof of the other offer is provided to the buyer.

As an example, let's say a buyer offers \$200,000 to a seller. In an addendum, the buyer offers to pay \$500 more than any other higher offer, with a maximum purchase price not to exceed \$205,000. The addendum may require that the other offer be provided to the buyer as proof before the higher purchase price is established. In this situation, if another buyer offers the seller \$203,000, the first buyer's offer is increased to \$203,500 if the \$203,000 offer is provided as proof.

(More information on escalation clauses can be found in other sources including Realtor.com and even the *Washington Post*. These sources have articles that cover a variety of issues. For this article, we will focus on how escalation clauses relate to the Division's statutes and rules relative to questions received by Division staff.)

Now that we have the term escalation clause clarified, let's discuss the concerns of the Division. Probably the biggest issue

relayed to our office is the use of an escalation clause as it relates to a violation of an agent's fiduciary duty. Does using an escalation clause inherently cause a violation of the fiduciary duty?

Remember, an agent or broker owes their client a fiduciary duty to look out for the client's best interests. Also, an agent must follow a client's lawful directions. Nothing in our statutes or rules disallows usage of the escalation clause. Agents can discuss this option with a client, and if the client approves the use of an escalation clause, it is a tool that can be used by a buyer as with any other contingency situation.

Some argue that an escalation clause is a violation of the fiduciary duty of protecting confidential information and can harm a client's negotiating power. It is true that an escalation clause can disclose the upper limit of a buyer's range on that property. But remember, if the client approves releasing this information, the agent can dis-

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close it. If for no other reason, this demonstrates why an agent should ensure that the buyer knows the pros and cons of their decision to use an escalation clause. It can affect their negotiating power in a transaction. Ultimately, if the client approves the use of an escalation clause, the agent can include it in the offer.

Related to this, there is the potential issue of not protecting the buyer if ramifications of the escalation clause are not thoroughly discussed with the client, or if written protections are not secured in the contract. For instance, in the example above, the clause included the requirement that proof is necessary for the clause to become effective. By omitting this term from the contract, a seller or listing agent could take advantage of the situation and claim a higher offer was received in order to invoke the clause. For the buyer's agent, it is a good idea to require proof. For listing agents, a copy of the offers can be provided if the seller agrees. Again, disclosing terms of other offers may harm a seller's negotiating position, but if the seller elects to accept the terms of an escalation clause, the listing agent can provide that information to a buyer's agent.

At the end of the day, an escalation clause is simply a tool which can be used to benefit a client. It

is up to the buyer and seller to decide whether they are willing to accept the terms of the escalation clause to get the deal done. The use of the escalation clause itself is not necessarily a violation of the agent's fiduciary duty. If an escalation clause is used, we recommend consulting with your broker and/or legal counsel to protect you and your client.



The Division has recently been notified of a couple of issues related to buyers not fully disclosing terms of their purchase offer, but then trying to get extensions to the contract for these contingencies. The two issues are: (1) making a cash offer and then trying to get financing, and (2) not disclosing the contingency of the buyer needing to sell their own property in order to pay cash.

These can be concerning issues for a number of reasons. The obvious first issue is the confusion and frustration the lack of disclosure can cause to the other parties. More than that

though, are specific issues for the buyer's agent in these situations. If the buyer's agent knows these are factors in the purchase, but the contract does not reflect them, the agent could be in violation of the statutes and rules for misrepresentation, incompetency, or fiduciary duty violations.

For example, let's say a buyer's agent knows the buyer needs a loan to get a deal done, but the agent assists the buyer in writing a cash offer in order to make the offer appear stronger. This is a misrepresentation, and could lead to a charge against the agent. This can also be a violation of the agent's fiduciary duty to the buyer.

To add to the scenario above, assume the buyer is trying to obtain financing, but is ultimately unable to secure a loan. Now the buyer is stuck in a contract the buyer may not be able to fulfill (read: breach of contract), and may not be able to cancel the contract without incurring liability for the seller's damages. If the offer was written properly disclosing the need for a loan, the buyer would have had the protections provided for by the financing contingency including the means to exit the contract without forfeiting their earnest money. In this scenario, the agent may not have protected the buyer's interests properly, thus raising the possibility of ei-

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ther a violation of the agent's fiduciary duty, and/or incompetency.

Now consider a variation of the situation described above. What if the offer is written as a cash offer, but the "cash" is not liquid at the time (e.g. tied up in their primary residence the buyer needs to sell in order to pay cash). This can also be a problem for the buyer's agent and buyer).

If the buyer is unable to acquire the cash necessary to purchase the property, the buyer may be forced to breach the contract. This is a potential violation for the agent. First, cash tied up in an asset is not the same as liquid cash, so a cash offer may be misleading and could support an incompetency or misrepresentation charge. In addition, by not including in the contract the contingency of selling the buyer's current primary residence, the buyer may be forced to breach the contract and may lose earnest money or be subject to the seller's damages. Again, the agent may not have adequately protected their client, so a fiduciary duty violation could result.

As with the example above, this situation ties directly into a scenario where a buyer needs to have a contingency in place to sell their primary residence be-

fore the purchase of their new home. If the contingency is not in the contract, it can create a problem for the buyer, and it can be a problem for the agent for not having adequately protected the client's interests or by being misleading.

Finally, in both of these situations, by not building in the appropriate contract protections, the buyer may not be able to justify additional time to close on the transaction. As with many similar situations, it may be up to the seller to agree to an extension of time to allow for buyer contingencies to take place, but the seller may not be willing to agree to new terms. The buyer may be out of luck.

Please take care in these situations so as not to mislead the other parties in the transaction, or to create a situation where your client may be harmed. Otherwise, the Division may become involved as well. As a reminder, every case is fact specific. If these situations arise and complaints are filed with the Division, the Division will need to review the cases for specific facts to determine if violations have occurred.



Based on recent cases before the Division, the investigators would like to issue a caution to our appraiser licensees on the use of a report entitled *Desktop Appraisal Report*. Before discussing the issues the Division has seen, it is important to clarify that the form itself is not necessarily a problem nor is the use of it. In certain situations, as with any report (URAR included), it may not be an appropriate form to use in some assignments. This is what the Division has seen and would like to address.

For clarity in this article, the *Desktop Appraisal Report* form has an area to show comparable sales and relevant information about the comparable sales, including information related to lot size, GLA, bed/bath counts, etc. as with the URAR. This particular form, unlike the URAR, does not allow for adjustments to be shown on a grid. The Division has concerns because staff members have seen this form being used in assignments where the scope of work

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may require more information than what this particular form allows to be reported. Two of the main examples would be for lending or tax appeal purposes.

Per USPAP, it is the duty of an appraiser to set the scope of work and ensure the scope of work allows for credible results. It is also an appraiser's duty to ensure the reporting of their opinions and conclusions are presented properly so as to be credible and understood by the intended users of the report.

The problem we see with this form is that the report does not allow intended users or other readers of the report to have enough information to support the appraiser's conclusions. In lending or tax appeal situations, users of the report may need to see what adjustments are being made by the appraiser to support a value for comparable sales. When a form report does not allow for that specificity, the

appraiser needs to supplement the report, use a different type of report, or withdraw from the assignment. This may be particularly important if a client only allows for a *Desktop Appraisal Report* or similar form to be used in an assignment where the report does not have adequate information and could cause the report to be misleading or not credible.

Certainly, this type of form may be completely appropriate to use based on the scope of work performed and when the amount of information needed in the report is met by the *Desktop Appraisal Report*. An example may be in an assignment where a restricted appraisal report can be used in an assignment. The important thing for an appraiser to consider is whether the form is too restrictive in providing information in the report when more information may be needed.

The issues discussed above also tie into another potential issue. The Division has been told this form and other similar forms are being used by clients who are looking to get an "appraisal equivalent of a BPO." This is problematic for a different reason from the form itself.

According to Advisory Opinion 21, an appraiser needs to be cautious about situations where clients' choose a valuation ser-

vice provider based on the provider being an appraiser and the expectations of the client. If a lender/client would like a BPO, they can get that type of product from a real estate agent or broker. If the lender/client approaches a person because the person is an appraiser, then the appraiser needs to comply with USPAP. This means it may not be possible to do an "appraisal equivalent of a BPO" per se. Depending on the assignment requirements and purpose, an appraiser may be able to do this "BPO equivalent" (e.g. an assignment that may have reduced scope of work requirements), but it may not be appropriate for the appraiser to complete this type of assignment if the purpose or scope of work for the appraisal requires a higher level of evaluation or reporting requirements.

In conclusion, remember that an appraiser is responsible to decide whether or not a particular form may be appropriate to use based on the purpose of the assignment or the reporting requirements. The same goes to determining the appropriate scope of work level necessary to produce credible assignment results. Please use caution when making these decisions, especially as they relate to the *Desktop Appraisal Report* or other similar types of reports that may not be a good fit for the requirements of the assignment.



2018-19 Edition of **USPAP**



On April 13, 2016, the Appraisal Standards Board released the First Exposure Draft of proposed changes for the 2018-19 edition of the Uniform Standards of Professional Appraisal Practice. The draft of the proposed changes can be found here:

http://www.appraisalfoundation.org/imis/TAF/Standards/Exposure_Drafts/TAF/Exposure_Drafts.aspx?hkey=5b393d7e-4ed0-4c45-bf13-21ed4e2d14c5

The proposed changes include:

- Communication of Assignment Results and definition of report;
- STANDARD 6, Mass Appraisal, Development and Reporting;
- Definition of Assignment;
- Review of terms, assumption and extraordinary assumption;
- STANDARD 3, Appraisal Review, Development and Reporting;
- Review of Standards Rules 7-2(c), SR 7-5, and 8-2(v);
- Review of Standards Rule 8-3;
- Review of Advisory Opinions; and
- Other edits to improve clarity and enforceability of USPAP.

The public comment period for the First Exposure Draft has passed, but there will be future drafts allowing for public comment. To stay informed of all exposure drafts from the Appraisal Foundation, visit the link above.

Real Property Appraiser Qualification Criteria

On May 18, 2016, the Appraisal Qualifications Board released the First Exposure Draft of proposed changes to the Real Property Appraiser Qualification Criteria. This is a topic we have discussed in several Board Meetings as well as in our annual CARAVAN. The draft of proposed changes can be found here:

http://www.appraisalfoundation.org/imis/TAF/Standards/Exposure_Drafts/TAF/Exposure_Drafts.aspx?hkey=5b393d7e-4ed0-4c45-bf13-21ed4e2d14c5

The proposed changes include:

- Alternative track for Licensed Residential to Certified Residential;
- Enhanced Practicum Curriculum;
- Alternative Experience;
- "Trainee" Nomenclature; and
- Three-Year Supervisory Jurisdictional Requirement.

The public comment period for the First Exposure Draft has passed, but there will be future drafts allowing for public comment. To stay informed of all exposure drafts from the Appraisal Foundation, visit the link above.

PREFERRED LENDERS

- Marvin Everett, Investigator

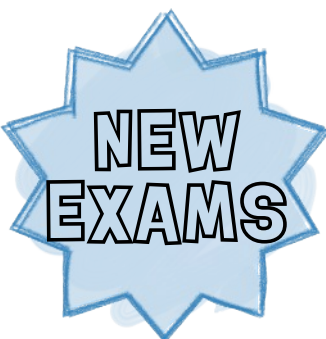
From time to time, the Division of Real Estate receives questions about preferred lenders and their place in the real estate industry.

Division statutes and rules were established not only to protect the consumer, but also our licensees as well. Utah Code 61-2c-301(1)(a) states that a person transacting the business of residential mortgage loans in this state may not give or receive a referral fee. This includes kickbacks or anything of value. It is a violation for a loan originator or mortgage entity to provide a kickback or referral fee as an incentive to a builder in exchange for business. Builders encourage homebuyers to use their preferred lender for a couple reasons. First, the builder has a legitimate concern about the homebuyer's ability to qualify for a mortgage loan. Prior to, or sometimes during construction, the builder may request that the buyer obtain a prequalification letter from their preferred lender, as a protection to the builder. Second, a long-term relationship between a preferred lender and builder promotes trust and confidence that the homebuyer was qualified correctly and will obtain financing in a timely manner.

The benefit to the homebuyer for using the builder's

preferred lender may be concessions, such as "free" upgrades to the home. However, the consequence of the buyer not using the preferred lender may be higher out of pocket costs at closing, or the loss of desired builder upgrades. As a result, homebuyers oftentimes feel compelled to use the builder's preferred mortgage company, which may not be the homebuyer's first or best choice. Competing lenders or brokers not affiliated with the builder may offer better financing options, possibly even with lower interest rates, benefiting the homebuyer. If the homebuyer decides to select a different mortgage company, the builder, concluding that it is not in the builder's best interest, can take away its concessions, but the builder cannot raise the purchase price.

As long as a builder and its preferred lender work in partnership without kickbacks or other incentives between the two parties, the Division does not consider these relationships a violation. The Division is committed to a level playing field for all mortgage licensees and fair practices among the real estate industry as a whole. However, the referral fee prohibition does not apply to the relationship between the builder and the buyer.



On July 15th candidates for real estate sales person, real estate broker, and mortgage lending manager licenses will be tested using updated licensing exams. Utah industry subject matter experts assembled for several meetings to review state

specific examination content areas and each question that will be included in the updated exams. The reason for these meetings was to validate the applicability and accuracy of new and existing exam questions.

Additionally, sales persons and brokers will receive exams that include specific questions (with a difficulty level that is appropriate for the license they are seeking). These questions pertain to the state approved Real Estate Purchase Contract and recently changed Closing Disclosure documents.

The Division would like to sincerely thank the real estate and mortgage industry experts who contributed considerable time and their valuable expertise to update these exams. As a result, real estate and mortgage licensing candidates will be better prepared to enter into their chosen professions.

MORTGAGE LICENSEE Setting up Shop in REALTOR'S OFFICE

To begin with, it is not necessarily a violation for a mortgage licensee to rent desk space in a realtor's office. However, in this scenario the mortgage licensee should be mindful of applicable rules in order to remain in compliance, as there is much to consider before entering into such an arrangement.

This article is written on the assumption that the mortgage licensee has received, is receiving, or will receive referrals from the real estate brokerage or branch in question. While there is nothing wrong with the objective itself, the mortgage licensee must not give or receive anything of value for the referral of business, which includes deferred expenses. That means the mortgage licensee (or the mortgage licensee's sponsoring entity) must pay his or her own way and must not pay any more than his or her own way.

For example, the mortgage licensee should pay the market rent for the desk or office space. The mortgage licensee should pay the commensurate portion of

the rent for the amount of office space assigned to that licensee but no more than that. If the licensee is allocated only 20% of the office space but pays 50% of the rent, that is a problem. Such consideration should also be given to other office expenses such as supplies and internet or phone usage. We are not suggesting the licensee should count his or her minutes used versus those of his or her officemates on the monthly phone statements, but whatever amount the mortgage licensee pays needs to make sense. Because of such potential issues, it is critical that the licensee keep good records in preparation for any potential federal or state audit.

Another matter the mortgage entity must take care of prior to setting up one of its sponsored licensees in a real estate office is registering that location as a branch with NMLS. Renting desk space is subject to mortgage entity branch requirements just like any other office location engaging in the business of residential mortgage loans. This means there must be a branch lending

manager (BLM) at such a location. In other words, if there is only one individual setting up shop in the real estate office, as is so often the case, then that licensee must be a BLM.

Among other potential pitfalls, one must also consider the following before entering into such an agreement with a real estate office: (1) borrowers need to be able to find the licensee, so there must be exterior signage, as with any branch; (2) borrower information and documentation must be securely stored, as it was entrusted to the mortgage entity--not to the real estate entity; and (3) if the mortgage licensee is a dual licensee--meaning BLM and real estate agent--he or she must take great care to work in only one of those capacities on a given transaction.

Although this brief piece is not all-encompassing, we hope you find it helpful. As always, please call if you have any questions about maintaining compliance with this type of arrangement.

RULE DEVELOPMENTS Since April 1, 2016

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

A rules committee has been formed to consider the rules relative to the removal of appraisers from appraiser panels and to consider what restrictions, if any, should be placed on the offering of appraisal assignments to appraisers. The committee has begun meeting to consider these issues, but has not yet made a recommendation to the Appraiser Board.

Appraisal

There are no proposed rule amendments under consideration for the appraisal rules.

Mortgage

There are no proposed rule amendments under consideration for the residential mortgage rules.

Real Estate

Rule 162-2f. The following rule sections were amended effective May 31, 2016:

1. R162-2f-102(36) – The definition of “Sponsor” is amended;
2. R162-2f-307 – The disclosures required for all undivided

fractionalized long-term estates (TICs) are set out in the amendment. In addition to the disclosures for all undivided fractionalized long-term estates, additional disclosures are required for any fractionalized long-term estates which include any of the following conditions:

- a) management of the real property by the sponsor or an affiliate of the sponsor;
- b) multiple tenants;
- c) debt on the real property; or
- d) a master lease agreement.

A rules committee has been formed to consider the advertising rules that apply to real estate licensees. The committee has begun meeting to consider this issue, but has not yet made a recommendation to the Real Estate Commission.

Timeshare and Camp Resort

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

NEW ONLINE INITIAL APPLICATION SYSTEM

The Division of Real Estate is always trying to find ways to be more efficient. It is interesting to look back and see how the Division has changed its systems and processes over the years. For example, we found a division ledger book containing records of license renewals and initial applications from June 1921 to June 1969. In 1921, fees were \$20.00 for a broker's license and \$3.00 for a sales agent license. In June 1921, the Division of Real Estate had a total of eight renewals or applications (five brokers and three sales agents). A lot has changed since then, and one thing we have been looking to improve is the initial application process. Over the past year, the Division has been working on a new online application system for initial applications. This new online system is currently live and is available for any prospective sales agent or timeshare salesperson. To submit an initial application, you can visit:

<http://dre-egov.commerce.utah.gov>

We encourage all real estate educators, brokers, and timeshares to tell prospective sales agents and timeshare salespeople about the new online system. The Division will continue to accept paper applications until we are certain the new system runs smoothly and efficiently.

2016 SPRING CARAVAN

SUMMARY

This year the annual CARAVAN went to nine different locations spread throughout our state. The Division was very pleased with the response and positive interaction between staff members and attending licensees.

Director Jonathan Stewart spoke primarily about new legislation that went into effect on May 10th of this year. For details on 2016 legislation affecting licensees, refer to the first quarter newsletter:

[\(Click here to view\)](#)

Mark Fagergren spoke about matters of interest regarding licensing and education.

Mark mentioned that occasionally the Division receives phone calls from Mortgage entities that have had their licenses involuntarily inactivated as a result of the departure of their Principal Lending Manager (PLM). Remaining company officers and mortgage loan originators (MLO's) often seek time to forestall the entity inactivation process by finding a "replacement Lending Manager" with an MLO. However, prospec-

tive lending managers (LMs) must go through the LM application process to qualify to take the LM education and subsequent exam. Unfortunately a mortgage entity cannot be active without an active supervising PLM.

Mortgage entities should plan ahead by having a "succession plan" to have individuals identified who could step into the PLM position without disrupting or temporarily closing the mortgage entity.

Mark reminded mortgage attendees that currently mortgage loan **processors and underwriters** are personally required to have a mortgage loan originator (MLO) license if they are either working for a non-licensed processing company (even if they are W-2 employed by the unlicensed processing company), or are practicing as an independent contractor (working for more than one mortgage entity).

Only processors and underwriters that are W-2 employees of Division licensed mortgage enti-

ties are NOT required to be personally licensed as MLOs.

Mark reminded and cautioned attendees of the statutory requirement consistent with RES-PA that a referral fee is prohibited. Referral fee means any fee, kickback, or thing of value tendered for the referral of business or a service incident to or part of a residential mortgage loan transaction. However, a referral fee does not include a payment made by a licensed mortgage entity under a contractual incentive program according to Division Administrative Rules RR162-2c-102 (8), and R162-2c-301b.

Mark expressed concerns on a national and state level regarding the increased national appraisal licensing requirements, underwriting conditions, downward pressure on fees, and the resulting declining job satisfaction and overall licensing numbers of residential fee appraisers.

There has been significant national decline in the number of licensed appraisers (28% decline

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in the number of appraisers since the peak of appraisers nationwide). There are several reasons for these declining numbers including:

- The ability to gain experience for Trainees and Licensed appraisers is diminishing;
- The overall lack of opportunities for entry-level appraisers;
- The high cost of a college education to receive a Bachelor's Degree (which is now required for Certification); and,
- The non-competitive compensation a graduate receives on becoming an entry-level appraiser.

Another challenge facing the residential appraisal industry on both a national and state level is the "aging of appraisers." Many appraisers are either leaving the industry due to diminishing job satisfaction or they are, or will soon be, retiring.

49% of certified appraisers in Utah are 61 years of age or older.

Nationally males represent 63% of appraisers and females represent 37%. In Utah, 77% of appraisers are male and 23% are female.

With the scarcity of individuals choosing to enter into the ap-

praisal profession, there are significant reasons to be concerned.

Although the total number of Licensed or Certified Appraisers in Utah has only declined 13.6% since the peak number of appraisers in 2008, the combined number of Trainees and Licensed Appraisers has dropped 77% since 2008. It is notable that the Division is currently seeing a 4 to 5% *increase* in the number of mortgage and real estate licensees, at the same time, the number of appraisers has *decreased* 4% this past year.

Most indicators tend to point to an upcoming shortage in residential appraisers both nationally and in Utah. The declining number of appraisers will likely not only impact the appraisal community, but real estate and mortgage professions as well. Licensees may be faced with more of a challenge to obtain prompt, competent, and cost effective appraisal services.

To see the location of appraisers distributed throughout our state, please observe the State of Utah - [County Map](#), for the total number of appraisers (residential, non-residential, ad valorem – mass appraisers) by County (as indicated by their reported home addresses).

The Appraisal Qualification Board (AQB) is considering a number of changes to help maintain the public trust in the ap-

praisal profession, while reducing regulatory constraints that have contributed to the declining appraiser numbers. For information about AQB considerations, refer to the article "Real Property Appraiser Qualification Criteria" on page 14, found [here](#).

Mark Fagergren cautioned residential real estate brokers from becoming involved in property management (or any "specialty field" of the real estate business), without obtaining current, factual expertise, and exercising active supervision of all staff members (licensed and unlicensed) involved in the new endeavor. Mark discussed how he recently received a phone call from an outstanding real estate broker that he has known over the years who was currently involved in one of the "largest nightmares" of their career.

The broker allowed an agent to delve into property management to see if this venture could become an additional profitable and successful venture of their residential brokerage. Without obtaining personal expertise and providing the necessary safeguards and oversight, this broker "trusted" that the agent would obtain the necessary knowledge, and comply with all record keeping and other requirements.

One day the broker went into the office and found all property management records and files had been removed. The broker

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had absolutely no means of verifying who was entitled to deposit refunds, who had paid rent, and for what time period, etc.

Unfortunately, when the broker called for my help and assistance in resolving with this troubling situation, I had to explain that the broker is ultimately responsible for keeping and maintaining brokerage records and files and could be in “hot water” for not maintaining the records and files.

The broker was responsible for the management of a number of properties and had personally signed the utility agreements. This issue was not easily resolved, and has caused the broker considerable consternation. A word of warning from this broker: “Don’t engage in business that you know nothing about and be sure to actively supervise your agents who engage in a new field of business. Keep all files locked and secured and have back-up electronic and paper copies of all documents.”

Mark discussed a new electronic notice being distributed to all Principal and Branch Brokers. This new document, “Notice of Broker Agent Status” is now distributed to brokers during the first week of each month. The notice has color coded information that shows the broker which of their sales agent’s licenses will be expiring within the upcoming 45 days. The document lets the broker know the number of Core

Topic and Elective Continuing Education hours each of their licensees has completed as of the time recorded on the notice. The notice also indicates whether the licensee needs to complete the new agent course prior to their next license renewal. The notice highlights in “red” those individuals whose licenses have expired. See attached sample [“Notice of Broker Agent Status.”](#)

Finally, Mark played a game of “Real Estate Jeopardy” involving real estate cases that had been resolved in the legal or administrative systems across the country during the past year. These cases had been litigated and were intended to be fun and a learning tool for licensees. For brokers or licensees wanting to review the 2016 CARAVAN version of “Real Estate Jeopardy,” please reveal the board by [clicking here](#). Choose the cases you wish to learn more about, and then [click here](#) to reveal the court’s decision for each of the cases.

Jeff Nielsen, the Chief Investigator for the Division, spoke about enforcement issues in the mortgage, appraisal, and real estate industries.

Jeff started with a discussion of some recent mortgage issues. First, as mentioned by Director Stewart, the Division added statutory language regarding the authority to make rules related to

mortgage licensees signing documents on behalf of others. Jeff mentioned the Division will be working with the Mortgage Commission to craft rules.

Second, Jeff mentioned referral fee issues are becoming a big problem for the industry, both locally and on a federal level. Jeff pointed out that a number of current investigations have issues related to referral fees.

Finally, Jeff reported that Division staff occasionally receive questions about when a person can market without having a license. Jeff pointed to the statute which states if a person, for compensation, directly or indirectly solicits a residential mortgage loan for another, the person needs a license. Jeff used two examples to highlight the issue. One example was of a marketing employee who designs ads for a mortgage company to be used in a magazine. The other example was an employee who meets with local builders to drum up business for the company. The former probably would not need a license, while the later probably would.

Jeff also highlighted a few recent licensing hearing decisions as well as enforcement cases. Regarding licensing decisions, Jeff pointed out that, among other things, charges for minor retail theft can drastically affect a person when renewing a license, as misdemeanor theft requires a three year denial of a license.

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Jeff spoke about appraisal issues, including a trend over the last couple of years in which the number of appraisal complaints is declining. Jeff suspects appraiser complaints are declining because any disciplinary action, no matter how small, against an appraiser affects the appraiser's ability to get work from lenders and AMCs.

Jeff discussed how a majority of appraisal cases are really an educational experience for the licensees and only a small number of appraisal cases seem to result in an action by the Division. Jeff highlighted a couple of issues regarding appraisers using MLS records in lieu of actual county records to determine if prior sales had occurred on properties and appraisers relying on assessor information as support for their own conclusions. This led to a discussion about how one trend the Division has seen is the lack of supporting documentation in a number of appraisals.

Jeff also covered a couple of matters related to the appraisal and real estate industries. One such matter is the use of the "Closing Remarks" field in the WFRMLS, or similar fields in the other MLSs. Jeff pointed out this MLS field seems to be underutilized and that it can assist both the real estate and appraiser industries. For example, if a sale has a unique aspect, such as being a non-arm's length sale, a

note in the closing remarks field can alert other agents and appraisers of this issue. In this example, a non-arm's length transaction is something that may affect value assessments by industry members using the sale as a comparable.

Jeff also presented a case example of how appraisers and real estate agents generally look at comparable sales. He showed various comparable properties plotted on a map from a recent Division case. Jeff used these maps in a discussion to show differences in views by appraisers and agents to show how sometimes both industries can be stuck in their views and to highlight how consideration to various alternatives may be necessary.

To close out Caravan, Jeff finished by discussing recent real estate items. Jeff reiterated Mark's discussion of the new broker emails and how the notice can be used by brokers to build a safe harbor against an action by the Division if they use the emails as a tool. By letting their licensees know their license has expired, or is close to expiring, brokers can use the emails as proof that they let their licensees know of the issue and informed licensees with expired licenses to stop working on behalf of the broker until their license is renewed.

Jeff also covered some property management issues related to the slightly different power of attorney rules created for property managers and the need to confirm agency relationships in lease contracts (similar to section 5 of the REPC). He also reviewed a rule change which requires all trust monies be dispersed to an owner or a new property management company within 30 days of a change in property managers. Jeff highlighted how there have been some instances of property managers using security deposits for inappropriate reasons, such as to cover fees owed to the managers by their clients. Jeff discussed how security deposits are on a different level than other trust funds when it comes to what managers can do with them.

Jeff pointed out that a committee was formed by the Real Estate Commission to determine potential changes to advertising rules. Some of the changes being considered are in relation to size requirements of the brokerage name and social media related items. Recommendations from the committee will probably be presented to the Commission in the coming months.

Jeff covered a new rule related to gifts and inducements given by licensees to clients, offers or advertisements of licensees to give money to charities for use of their services, and referral fee issues regarding agents. Jeff discussed

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that giving gifts to clients are not a commission split, as long as the licensee complies with underwriting guidelines, but that licensees need to exercise caution when giving gifts or money to third parties.

Jeff also discussed some recent changes to the auction rules. He reviewed the need for the auction companies to either be licensed or affiliate with a real estate broker for the auction. He also mentioned that auction companies may not market their services to property owners who already have an agency agreement in place with a licensee.

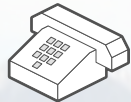
Jeff covered some commercial issues. Two main issues are the lack of documentation in commercial real estate transactions - such as a lack of written agency agreements, commission agreements, and limited agency disclosures, and a practice of trying to convince clients of other agents to break their contracts and list with another agent. Jeff discussed how the commercial and residential industries are very different, but the statutes and rules apply to both. These practices are a violation of the rules, even though they may be commonplace in the commercial industry.

As with mortgage licensing decisions, Jeff pointed out how a few licensees convicted of certain crimes led to the loss of their real estate licenses. Jeff also dis-

cussed how limited agency can be difficult to balance in some transactions and referred to cases where real estate licensees have had action taken against them for transactions involving the sale of their own properties. Licensees are cautioned to conduct themselves appropriately when selling their homes.

QUESTIONS?

Let us know!



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SAVE THE DATE!

Utah Division of Real Estate

2016

Instructor Development Workshop

IDW

**OCTOBER 25 & 26TH
PARK CITY MARRIOTT**

Hear from the Division representatives as they present current industry information and changes during the morning session On October 25th.

**- Jonathan Stewart
Division Director**

**- Jeff Nielsen
Chief Investigator**

**- Mark Fagergren
Licensing & Education**

Featuring



Eric Storey

Eric B. Storey is currently Senior Vice President and Manager of Corporate Properties for Zions Bank in Salt Lake City, Utah, overseeing property management, construction/project management, and purchase/leasing of bank properties. He is a licensed Real Estate Broker, Certified General Appraiser, and Continuing Education Instructor in the state of Utah.

Mr. Storey holds the CPM designation from the Institute of Real Estate Management, the CCIM designation from the CCIM Institute, the SRA designation from the Appraisal Institute, and the DREI designation from the Real Estate Educators Association. Eric graduated from Weber State College with a Bachelor's Degree in urban planning, communications, and family studies. Eric is a past co-leader of the IREM faculty. As a member of the IREM faculty, he teaches the FIN 402, ASM 603,604,605, and the MPSAXM Prep. Eric is also a MPSAXM Grader.

Mr. Storey is also the founder and CEO of the Equity Capital Institute (ECI). ECI publishes articles and creates financial spreadsheets used to analyze equity positions used in real estate investments. Eric recently co-authored "Profitable Real Estate Analysis, The Capital Puzzle".

Eric is married to April and they have five children. His hobbies include raising Angus beef, playing in a band, and cooking.

Utah is the second driest state in the union. Eric Storey personally advanced the cause to include Water law as a core topic course for real estate continuing education. Included in this year's IDW, Eric and Tage Flint The General Manager of Weber Basin Water will teach an insightful three hour course entitled "The Flow of H₂O – Utah Water Issues (CORE).

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