

**UTAH RESIDENTIAL MORTGAGE REGULATORY  
COMMISSION MEETING**

Heber M. Wells Building  
Second Floor - Room 210

10:00 A.M.

January 4, 2006

**MINUTES**

**STAFF MEMBERS PRESENT**

Derek Miller, Division Director  
Jon R. Brown, Enforcement Director  
Mark Fagergren, Education/Licensing Director  
Dee Johnson, Investigator  
Shelley Wismer, Assistant Attorney General  
Ron Kunzler, Assistant Attorney General  
Renda Christensen, Board Secretary

**COMMISSION MEMBERS PRESENT**

A. Thompson Calder, Chair  
Pierre Alley, Vice Chair  
Heather MacKenzie, Commissioner  
Alan Bowyer, Commissioner  
Kay Ashton, Alternative Commissioner

**GUESTS**

Elizabeth Walther  
Paul Naylor  
Eva Rees  
John Norman  
Lance Miller  
Dave Luna

The meeting on January 4, 2006 of the Utah Residential Mortgage Regulatory Commission began at 10:00 a.m. with Chairman Calder conducting.

Administrative Law Judge Masuda Medcalf swore in Kay Ashton as an Alternative Commissioner. Director Miller explained to the Commission how the statute allows for an alternate commissioner. The alternate will serve as a full functioning commissioner when a quorum is needed. Director Miller has asked Commissioner Ashton to sit at the table with the Commission and Division

during the hearings and he would be able to ask questions during those hearings. He will also sit in on the Executive Session with the Commissioners. He will not vote or make any comments during the Executive Session. He will be there to observe unless there is a need for him to function as a fully functioning quorum.

Commissioner Bowyer asked Director Miller if Commissioner Ashton would be able to vote when there was a tie vote in an Executive Session, instead of just being there to fill-in if there were not a quorum. Director Miller said the statute is specific stating that he would only vote in a situation where a quorum otherwise would not be present. He said it may require a technical change that would need to be done by going to the legislature and asking for a correction to that part of the statute. Chair Calder said he would suggest seeing if could be done during this upcoming session.

Commissioner Ashton briefly introduced himself to the Division by saying he is married with 4 children. He graduated from the University of Utah, has been in the real estate business for 7 years and has been in the mortgage industry for 20 years. He is currently the Utah District Manager for Home Loan Corporation.

## **PLANNING AND ADMINISTRATIVE MATTERS**

Approval of Minutes - The minutes from the December 7, 2005 meeting were approved as written.

## **DIVISION REPORTS**

Enforcement Report – Dee Johnson

Mr. Johnson said in December the Division received 14 written complaints, opened 22 new cases for investigation, closed 8 cases, leaving the number of open cases at 135.

There is an expanding problem with loan officers, appraisers, and real estate agents involved in altering documents. These documents have been scanned into a computer and then altered.

Mr. Johnson said Mr. Brown and several investigators have audited a mortgage company accompanied by the Intermountain West Regional Computer Forensics Laboratory. This group is comprised of a combination of federal and state employees, and the forensics lab is available to state and federal agencies. This forensics lab has the capability to retrieve data from computer hard drives even if it has been deleted by the users. The Division has been able to use the capabilities of Intermountain West Regional Computer Forensics Laboratory to gather the data needed for an audit. The Division will enter a business with a

subpoena in hand and one or two U.S. Marshals or police officers who have been trained to do this, take the computer apart, and image the hard drive.

Mr. Brown said the whole procedure took about 5 hours, and instead of finding two computers, they found 12 computers. He said all the investigators will attend a one-day class put on by the forensics lab to train them on the administrative part and the practical part of extracting this information and what it will mean to the Division.

Mr. Johnson said the Division is receiving many complaints regarding loan officers receiving checks and funds directly from the borrower. In many cases it is being explained to the borrower the funds are for an appraisal or for services that are to be provided. These loan officers are not using any kind of disclosure form indicating when they take the money what the purpose is that the funds are being used, and if any of the funds are refundable. Quite often the transaction isn't completed and the loan officer is refusing to return the money. Mr. Johnson said on the real estate side the money is taken in and handed to a broker to deposit in his trust account. On the mortgage side, the money isn't handled this way. He said the Division would like to see a rule on how this money is handled.

#### Director's Report – Derek Miller

Director Miller said Ms. Wismer has a clarification of a rule on renewing active versus inactive and the CE requirement. The current rule doesn't distinguish between inactive and active. The Division has been enforcing the rule as if the person renews as inactive and then change your status to active, you have to prove your CE.

Ms. Wismer handed out a draft of R162-207-3, Renewal Process. This draft clarifies the rule on the renewal process and also make a small addition to the R162-203-5, Activation. After some discussion, it was suggested the wording on activation be changed to read "...successful completion of the number of continuing education hours..." Mr. Fagergren suggested the time frame be clarified, and Director Miller said the Division is inclined to say two years from the time of activation. Ms. Wismer will re-draft the rule and get it started in the rulemaking process.

Director Miller said the Division has received its first batch of PLM Experience Documentation Forms. He said all of the forms as of today have been received via a PC fax which will be e-mailed to the licensing technician to process. This is something new for the Division. After the application has been processed, it will be filed by saving it onto our network drive. This will be an entirely

paperless process in place in regards to PLM applications.

Director Miller brought up the topic of record retention. After reviewing the statute and rule, there is some benefit of clarification with regards to record retention. The question is "Who is required to keep records?" The statute talks about R61-2(c)302 "persons or parties." This can be either the individual or the company. The way the Division has looked at this in the past in our rules is that both should be keeping records. Mr. Brown said many times when a person leaves a company, the company retains the records and will not let the individual take them when they leave. Director Miller opened topic for discussion.

Commissioners Bowyer and Alley both said they consider files as company property and nothing leaves if the person were to resign or leave the company. The issue of identify theft came up and right of privacy issues. Mr. Norman said these are typical questions he has been asked. He asked about keeping records electronically versus paper copies. State statute would always take precedence over company policy on the rules. Chair Calder said he has seen when a company goes out of business that all their records have been thrown in the dumpster out in back of the building. He said in his real estate business, his files stay with him when he goes to another company. He said this type of information is a lot less sensitive than what a loan officer would have in their files. Commissioner Alley said it is very expensive to store and receive records in a secure facility. Director Miller said the Division believes it is a good idea for the loan officer to keep a file for self-protection. Also, the Division will benefit when a person is called in by an investigator, because they have more incentive to produce those files if it can clear their name. Director Miller thanked everyone for their opinions and suggestions, and said the Division will keep them informed as it moves to a resolution.

#### Education/Licensing Report – Mark Fagergren

Mr. Fagergren updated the Commission on the status of the PLM Exam Committee. They have met with Promissor and spent the day going through questions and coming up with a cut score.

The information on CE Banking from Promissor has been delayed. The information will be going out on January 6<sup>th</sup>. The information will explain the process and describes the details. Any courses taught in 2006 will need to be uploaded into this system in order for students to receive credit. The actual data entry banking will begin on or after January 13<sup>th</sup>.

In mid-December the application for the PLM schools was made available.

There have been approximately 4 applications submitted. One was approved outright yesterday, two others have some clarifications needed. A PLM school is not a separate school, it is just the differentiation between whether a school is teaching the 20 hour or 40 hour class, or both. There are different requirements for both approvals, as well as different levels of qualifications for instructors. The instructors should have more qualifications to teach the PLM.

The PLM application must be submitted to the Division for review. The Division will make the decision based on what their experience is, and will send back a waiver describing specifically what they will need to do. The turnaround time on the applications will depend on the volume, and experience.

The Division newsletter will be going out later this month. Currently, it is approximately 22-24 pages long. It will cover all three industries, real estate, mortgage, and appraisers. It will include an article on the PLM application process.

Mr. Fagergren gave a report of first-time and repeat test takers. If repeat test takers are included, it quite dramatically drops the pass rate. First-time test takers is higher than when all test takers are added together. He gave some examples of school statistics. One has a 43.7 % pass rate, 69.6% pass rate, 62.5%, 65.3%, 42.9%, 84.1%, etc. The average for the state is 62.7% when you include the repeat test takers. These statistics cover January 1 through November 30, 2005.

#### Review of Criminal Convictions List

Mr. Johnson said the Division has reviewed 141 applications that didn't have to be reviewed by the Commission.

Jorgen P. Olsen/JPM Financial Services  
Denny Stewart

#### **INFORMAL HEARINGS**

11:15 American Brokers Conduit – Application for License Renewal  
Michael Strauss, Chief Executive Officer  
Alan Horn, General Counsel  
Mitchell Kider, Attorney, outside counsel

An Executive Session was held from 12:00 p.m. to 12:30 p.m.  
The hearing was continued 12:30 p.m.

#### **EXECUTIVE SESSION**

Results of Executive Session

American Brokers Conduit – Granted

American Home Mortgage Corp. – Application was remanded to the Division and Commission. The application was granted.

Stipulations

Tom W. Lundgreen – Approved

Thomas Petersen – Approved

David Rogers – Approved

Lesser Criminal Conviction List

Jorgen P. Olsen/JPM Financial Services – Schedule for hearing

Denny Stewart – Schedule for hearing

An Executive Session was held from 12:38 p.m. to 12:53 p.m.

A motion was passed to adjourn at 12:55 p.m.