

UTAH RESIDENTIAL MORTGAGE REGULATORY COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 A.M.

October 11, 2006

MINUTES

STAFF MEMBERS PRESENT

Derek B. Miller, Division Director
Jon R. Brown, Enforcement Director
Blaine Ferguson, Assistant Attorney General
Shelley Wismer, Assistant Attorney General
Dan Lau, Assistant Attorney General
Renda Christensen, Board Secretary
Amanda Orme, Mortgage Education Secretary
Jody Colvin, Licensing Supervisor

COMMISSION MEMBERS PRESENT

Pierre Alley, Chair
Alan Bowyer, Vice Chair
Rodney "Butch" Dailey, Commissioner
Heather MacKenzie, Commissioner

GUESTS

Eva Rees
John Norman
Lance Miller
Michael Welker
Holly Argyle

The meeting on October 11, 2006 of the Utah Residential Mortgage Regulatory Commission began at 9:00 a.m. with Vice Chairman Bowyer conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes - The minutes from the September 6, 2006 meeting were approved as written.

DIVISION REPORTS

Director's Report – Derek B. Miller
Director Miller said Dee Johnson and Mark Fagergren are attending an AARO

conference in Washington, DC. AARO is an appraisal regulatory organization. Director Miller will be giving Mr. Fagergren's report, and Mr. Brown will be giving the Enforcement Report.

Director Miller said the mortgage advertising rule brought in a few comments. One useful comment came from the UMLA and Director Miller turned the time over to John Norman to take a few minutes and discuss the rule. Mr. Norman said the rule was workable and the industry should not have a problem complying with the rule. Mr. Norman referred to R162-205-1(h)(iv)(2) that says a licensee may provide advertising to a property owner who has not signed an agency agreement with a real estate licensee and is selling the real estate "for sale by owner," so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the property owner and the mortgage licensee.

Mr. Norman said that advertising will be something valuable to the property owner. In RESPA Section 8 it prohibits giving anything of value for the referral of settlement services. He said an example would be potentially a loan officer could approach a "for sale by owner" and say he can provide a sign with the home owner's name and a phone number on it. In return for this service all the home owner would provide referrals to the loan officer. If that happens and the loan closes, a referral has taken place, something of value has been given, and the federal law has been violated.

Director Miller asked Mr. Norman in the scenario he just laid out, if he saw the referral as a violation if the person approaches the "for sale by owner" and says I'll give you a sign if you do your business with me. Mr. Norman said technically it would be a violation. Mr. Lance Miller said the contracts he has reviewed are very specific in that they tell the homeowner in the contract they are not required to refer any business. The tradeoff is that the homeowner will get a sign if they allow the agent to market their company on their front lawn. That is the "something of value," and Mr. Miller said it is how the national companies are doing it. He said what the Division is proposing is a way to do it properly and still be in compliance with RESPA.

Director Miller asked the Commissioners for feedback and comments. Vice Chairman Bowyer said the bottom line would be, whether or not the agreement is oral or written with the homeowner, that they are not required to use that mortgage company based on the services they are providing. That's where the line needs to be drawn. It should be that they could use the mortgage company, but they are not required to do so. Chairman Alley said it's OK to advertise lending services, but not property for sale. Director Miller said the

rule we currently have just says you can't use misleading advertising, and the Division wanted to provide more clarity to both real estate and mortgage licensees on what they could and couldn't do.

Director Miller said an article can be in the newsletter saying the new rule would allow them to do certain things up to a point, but they must stay on the right side of RESPA and state laws. His feeling is to move forward with the rule as it is and to accompany some guidelines in a newsletter article.

Director Miller said he had received a letter from the Chairman and a couple of the Commissioners with regards to W-2 and 1099's. This is a big issue for the industry now. He discussed this letter with legal counsel and it is the feeling of the Division that although the law allows for someone to be paid in a certain way, that only applies to how people are paid and not how they represent themselves to the public or their employer as to how they do business. If people have set themselves up as a LLC or other business corporation in order to be paid, that our statute allows for that. However, if someone is setting themselves up to the public just to go around some tax laws, then it would be a violation of our statute because it clearly talks about a PLM supervising licensees and it clearly talks about an entity doing business as a mortgage entity. Director Miller said people can't put themselves out as an entity and then claim they are actually an individual. If they are truly an entity, they will need to be licensed as one, and have a PLM.

Enforcement Report – John R. Brown

Mr. Brown said in the month of September the Division received 22 written complaints, screened 33 complaints (no cases opened), opened 8 new cases, closed 4 investigative cases, with 114 open investigative case files.

The continuing education audit report shows there were 8 new cases opened for investigation, 5 cases closed, 1 Stipulation signed by the Commission, leaving the number of open cases at 7.

Education/Licensing Report – Derek B. Miller

Director Miller said the Instructor Development Workshop has been scheduled for Thursday and Friday, October 26-27th. He invited all the commissioners to attend. This year the instructor is Deborah Long.

The quarterly newsletter is written and waiting for final approval. He believes it will go to the printer by the end of the month. This newsletter has quite a bit of material from the enforcement side, and it covers some of the scams that the Division has been seeing.

The 10-day rule for course providers to bank their continuing education still remains a problem when people are trying to renew. Some providers are not entering the CE into the database within 10 days. Ms. Wismer said the earliest possible effective date on the rule would be October 24th.

OTHER BUSINESS

Mr. Ferguson introduced the new Mortgage attorney from the Attorney General's office. He is Dan Lau, and Mr. Lau will be cross training with mortgage, real estate, and appraisal hearings.

INFORMAL HEARINGS

9:30 Patrick Nugent – Application for License
Jean Nugent, Wife
D. Brent Robison, Principal Broker/Principal Lending Manager

Review of Stipulation

Ronald Garcia

An Executive Session was held from 10:53 a.m. to 11:07 a.m.

EXECUTIVE SESSION

Results of Executive Session

Patrick Nugent – Application has been denied and he can not reapply for 5 years from the date of the NASD bar.

Results of Stipulation

Ronald Garcia – Approved

A motion was passed to adjourn at 11:09 a.m.