

UTAH RESIDENTIAL MORTGAGE REGULATORY COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 A.M.

December 6, 2006

MINUTES

STAFF MEMBERS PRESENT

Derek B. Miller, Division Director

Jon R. Brown, Enforcement Director

Mark Fagergren, Education and Licensing Director

Dee Johnson, Chief Investigator

Dan Lau, Assistant Attorney General

Shelley Wismer, Assistant Attorney General

Renda Christensen, Board Secretary

Jody Colvin, Licensing Supervisor

COMMISSION MEMBERS PRESENT

Pierre Alley, Chair

Alan Bowyer, Vice Chair

Julie McCan, Commissioner

Rodney "Butch" Dailey, Commissioner

Heather MacKenzie, Commissioner

Maralee Jensen, Alternate Commissioner

GUESTS

Al Bingham

Eva Rees

Howard Tolley

Holly Argyle

John Norman

Dave Luna

Michael Welker

Lance Miller

OTHER BUSINESS

Administrative Law Judge Masuda Medcalf administered the Oath of Office to Maralee Jensen as the Alternate Mortgage Commissioner. Commissioner Jensen will fill the remaining term of Kay Ashton. Mr. Ashton is representing the Mortgage industry on the Real Estate Commission.

Director Miller introduced Commissioner Jensen by noting she is the Principal Lending Manager of 1st Home Mortgage, which has been in business since 1993. She started with Western Mortgage in 1985, and has been very active in the

UMLA and in her community. Most recently, Commissioner Jensen completed a 4 year term as the Mortgage industry member on the Real Estate Commission. Director Miller welcomed her to the Commission.

The meeting on December 6, 2006 of the Utah Residential Mortgage Regulatory Commission began at 9:04 a.m. with Chair Alley conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes - The minutes from the October 11, 2006 meeting were accepted as written.

DIVISION REPORTS

Director's Report – Derek B. Miller

Director Miller has several topics he needs to discuss with the Commission. The first is fee changes. Every year the Department of Commerce has a hearing in which they submit proposals to change the fee structures in various industries that the Department regulates. There is a public hearing on the fees and any changes submitted, and these are given to the legislature in mid-January to either approve the changes, or not.

Director Miller has reviewed the fee structures for all the three industries. He wanted to make sure there was equity between the three industries (Appraisers, Real Estate and Mortgage). The fees need to be commensurate with the work that is being done by the Division. Director Miller wanted to make sure there was equity between the amount of resources being used in the industry, and how much that industry was contributing to the Division in fees.

The recommended changes are as follows:

License Histories – The current fee is \$10 and the recommendation is raise the fee to \$20. This would keep it commensurate with the amount of work involved.

Application fee for Individuals - The current fee is \$200, and the recommendation is to reduce the fee to \$100.

License Renewals – The current cost is \$103 and the recommendation is to reduce the fee to \$30.

Mortgage Entities/DBA License – The current cost is \$200, and to do a DBA it currently costs \$100. The amount of work is the same, the outcome is the same. The recommended change would be to increase the fee of the DBA to \$200 to make it the same as cost to license an entity.

Director Miller is recommending a decrease in the amount being taken in by the Education and Recovery Fund. The decrease for an individual would be from

\$36 to \$18, and for an entity the decrease would be from \$50 down to \$25. These fees have been building up the fund and Director Miller believes the fees should be lowered because of the amounts being received. Director Miller said that the main purpose of the fund is when someone will make a claim against the fund, and that balance needs to be approximately \$200,000 at all times.

A motion was made to accept the new fee structure change. It was passed unanimously.

Director Miller brought up the topic of record keeping requirements. Currently it states the PLM is responsible for the records. The question is who would be the responsible party of the company records if the company goes out of business. Commissioner Boyer said he believes if the PLM quits and the company goes out of business, the PLM still would have some responsibility. Mr. Johnson said from an investigative standpoint, it may be the loan officer or it may be the PLM. Chair Alley and Commissioner Dailey believe the responsibility would be on the company if it goes out of business. Whoever the owner of the business is would be the responsible party. Director Miller said he agrees the owner is the responsible party for the records.

Commissioner Jensen said the accountability should fall on both the owner and the PLM. Commissioner McCan said the PLM is responsible while the PLM is with the company, and if necessary, the Division could take action against him. Director Miller said if the problem is with practicality. The answer is that the company is responsible, but you need a person to talk to, and who would that person be? Director Miller said we need to review the statute to see if it needs to be changed.

Another item of discussion would be what happens if a PLM becomes incapacitated for one reason or another. Currently the Division makes sure the PLM knows they are responsible for all the employees under them and they either need to sign a change card inactivating them, or they need to give the Division proof of sending a certified letter to inform the employees he is leaving. The concern has come up if the PLM is hit by a bus and there is a closing tomorrow. The statute states a company must have a PLM to do business. It doesn't allow for any exceptions. Director Miller has been approached asking if the Division would consider, statutorily or in rule, creating some exception or time period for the rare case when something happens to the PLM. Mr. Fagergren said when someone dies the Division has worked with the company to get a PLM in place to continue business. Some people have suggested giving them a "grace period" of 10 days, for example, to fill the PLM position.

Mr. Johnson said the period of time becomes important because the Division doesn't want a company operating without a PLM. Yet, what does a company do when the PLM walks out the door? If the Division inactivates the company and all the employees the next day and the lender checks to see their status, what happens to the borrower? Mr. Fagergren said it's the same on the real estate side when a broker dies. They don't close deals and the Division tells them that we are going to give you time to put someone in who is responsible to oversee the company.

Commissioner Dailey said anyone in the business should have a contingency plan for a worst-case scenario. Mr. Brown said more real estate companies have Associate Brokers on staff than mortgage companies have Associate Lending Managers.

Director Miller said the Division doesn't allow the PLM to just walk away. If they want to leave the company they still have a responsibility to make a smooth transition. He is referring to the PLM leaving for unforeseeable reasons and outside of the control of anyone else. Mr. Fagergren said the Division is sympathetic to deaths that happens, and the spouse (or whoever calls) is told that they need to have someone in here within the next week to ten days with a decision. Do they want to sell the business, or do you have an Associate Broker, etc. The law doesn't allow them to continue the business without having someone there. On the real estate side, it has not been a huge transition problem transitioning from one broker to another.

Director Miller said in the mortgage industry, over a course of time, they need to develop the same kind of understanding. The statute states there must be a PLM to conduct the business of mortgage loans. Technically it would mean the origination of loans, not funding the loans. The loan could still be funded and close but the company could not begin any new loans. Commissioners Dailey and Jensen stressed the companies should have a back up plan. Each company needs to plan for the unexpected. Chair Alley recommended an article in the newsletter to discuss the fact of a contingency plan.

Director Miller brought up the topic of a licensee upgrading their license (i.e., loan officer to ALM/PLM, etc.) while under investigation by the Division because of the current license they hold. In the past the Division has sent a letter notifying the applicant that because they are currently under investigation the application will be on hold pending the outcome of the investigation. The statute states the Mortgage Commission with the concurrence of the Division will approve or deny license applications, unless the Commission has delegated its

authority in some specific category to the Division. The Commission has given the authority to the Division on this matter, but not on the applications under investigation. Director Miller said the question is what is the feeling of the Commission for people falling under this category? Vice Chair Bowyer said the applicant is innocent until proven guilty, but on the other hand the statute says the person must meet competency, honesty, integrity, etc. While an investigation hasn't proven this yet, it has been called into question. Until the issue is resolved the Division should not take a licensing action. After some discussion it was decided to put something either in statute or rule that gives the Division something to refer to in law so it doesn't appear to be arbitrary.

Chair Alley brought up the issue having a state disclosure form for licensees acknowledging who the lender and loan officers were in each transaction. Also, a copy of the loan officer's or company license or both should be kept in the file at all times. He said the reason is the title company's escrow officer would ask for a copy of the license, and the statute says the loan officer is supposed to send a copy of their license for the title report. He said this would raise the level of the importance of having a license. Appraisers are required to send a copy of their licenses, and if they don't, the appraisal isn't accepted. Having a copy of the license in the file would give the investigators more support. Often times there are borrowers out there who don't know who their loan officer was and this is unacceptable.

Director Miller said having a rule requiring a copy of the license be in the file was a good idea. He also likes the idea of having the disclosure form. Mr. Johnson said it would be like an Agency Disclosure for a real estate agent. He said if there were going to be a requirement it could be done in the beginning before signing the closing documents. Chair Alley said there are certain forms required for federal law which the consumer has to sign, and wondered if there a difference between what the federal regulators require and what the state regulators require. Commissioner McCan said the lenders might have a problem adding another document to the closing packages.

Enforcement Report – Dee Johnson

Mr. Johnson commented this would be the last Mortgage Commission meeting for Mr. Brown who will be retiring on December 15th. He said Enforcement has appreciated working with Mr. Brown. He has been the Lead, Director, and Trainer for all of the investigators, and will be greatly missed.

Mr. Johnson reported in the month of October the Division received 35 written complaints, screened (with no cases opened) 12 complaints, opened 1 new case for investigation, 3 cases were closed, leaving the number of open case files at

112. There were 2 licensing/renewal hearings, 1 Stipulation/Order signed by the Commission, and 1 Petition or Cease & Desist Order issued.

The Continuing Education audit report for October shows 2 new cases opened, 3 cases closed, leaving the number of audit investigations at 6 files.

The month of November shows there were 20 complaints logged, 5 complaints screened (with no cases opened), 4 new cases opened for investigation, 1 case closed. The number of open case files is 115. There was 1 Petition or Cease & Desist Order issued.

The Continuing Education audit for November report shows 4 new cases opened for investigation, 2 cases were closed, leaving the number of open investigations at 8 files.

Education/Licensing Report – Mark Fagergren

Mr. Fagergren the Mortgage industry has always led the Division with respect to on-line renewals. Last month that was reversed. The percentage of on-line renewals for real estate was 60%, and mortgage had a drop to 50% for on-line renewals.

Mr. Fagergren thanked the Commission for passing the 10-day rule for processing CE banking last month. It has helped to get those educators report the hours banked within the 10-day limit.

Mr. Fagergren said there was an error in the August 3, 2005 minutes. In the minutes there was a list titled "Criminal Convictions for Concurrence." There was an entity that had some action taken against them in a couple of states, but these were not criminal in nature. He is suggesting amending the minutes of this meeting to indicate that the list was a "Disciplinary Action List" as opposed to a "Criminal Convictions for Concurrence" list. There was also an error in the name of a company and its DBA that needs to be corrected. There was a motion made and accepted to correct the minutes on these two items.

There are currently 12 schools that teach mortgage officers. From the 12 schools, 230 individuals took the Utah Mortgage exam in October. Of that 230, the largest school had 14% of the market. The top six of those schools were within 5% of each other. The overall percentage of passing both parts of the exam was 58%. The three top schools by percentage were 92%, 80% and 75%. Two of those schools have on-line courses.

Mr. Johnson noted on the statistics 1 out of every 8 people are now PLM's. The

number is continuing to grow steadily.

THE MEETING WAS CLOSED TO THE PUBLIC AT 11:10 A.M.

Review of Stipulations

Troy Wride

Laurie Speth

Trio Capital, LLC and Brandon Tripp

An Executive Session was held from 11:23 a.m. to 11:35 a.m.

EXECUTIVE SESSION

Results of Executive Session

Stipulations

Troy Wride - Approved

Laurie Speth - Approved

Trio Capital, LLC and Brandon Tripp - Approved

A motion was passed to adjourn at 11:44 a.m.