

UTAH RESIDENTIAL MORTGAGE REGULATORY COMMISSION MEETING

Heber M. Wells Building
Second Floor Hearing Room

9:00 A.M.
May 2, 2007

MINUTES

STAFF MEMBERS PRESENT

Derek B. Miller, Division Director
Mark Fagergren, Education and Licensing Director
Dee Johnson, Enforcement Director
Dave Mecham, Chief Investigator
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary
Amanda Orme, Mortgage Education Coordinator
Tiffeni Wall, Real Estate Education Coordinator
Jody Colvin, Division Staff
Kristin Fry, Division Staff

COMMISSION MEMBERS PRESENT

Pierre Alley, Chair
Alan Bowyer, Vice Chair
Heather MacKenzie, Commissioner

GUESTS

Paul Naylor	Jeremy Plouzek
John Norman	Michael Welker
Brant Hayward	Howard Tolley
David Luna	Cory Martin
Lance Miller	Chad Ahearn
Rep. Paul Ray	Ron Duyker

The meeting on May 2, 2007 of the Utah Residential Mortgage Regulatory Commission began at 9:15 a.m. with Chair Alley conducting.

Chair Alley said Commissioner McCan and Alternative Commissioner Jensen will not be attending today. Because the second hearing today has been rescheduled, the 1:30 discussion on PLM and Licensee Compensation will be moved up to approximately 11:00 a.m.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes - The minutes from the March 7, 2007 meeting were approved as written.

DIVISION REPORTS

Director's Report – Derek Miller

Director Miller said the Caravan was very successful and wanted to compliment the staff for putting together a good event. There were six different locations visited: St. George, Richfield, Moab, Provo, Park City, and Brigham City. There was a very good turnout in each location. There was a good response and an expression of appreciation from the people we visited.

One of the things discussed on the Caravan was mortgage fraud. People are getting tired of hearing about it, but it continues to be a problem in our state. Mr. Johnson gave a presentation about mortgage fraud and started by giving some statistics and why it's a problem in our state. The initial reaction from the people was that it's not a problem here. As Mr. Johnson got into the specifics in what the investigators see in mortgage fraud a lot of people's light went on and they realized it is a problem in their area.

Director Miller gave an update on a couple of rules. Yesterday, he signed and made effective the Mortgage rules dealing with both applications and renewals to get a mortgage license. The Division has had a rule in effect now for a number of months on the real estate side that basically said if you are applying to get a real estate license and have had a felony within the last five years, or if you have had a misdemeanor that involves fraud, theft, dishonesty, etc. within the last three years, you do not qualify to apply. And if you have had a felony during your last renewal cycle, you do not qualify to renew your license. That rule on the real estate side has been very effective in weeding out the kinds of people we don't want in our business. Both Mr. Johnson and Mr. Fagergren have noted the number of applications coming through with problems has greatly diminished, and Director Miller credits the educators for getting the word out. That doesn't mean that anyone else gets a free pass. Anyone else will come before the Commission to decide who gets licensed.

The rule has been on the real estate side for a number of months, and Ms. Christensen, who takes the calls from people with criminal histories, shared with Director Miller a couple of months ago an interesting experience that she had where people would call and she would explain to them that they didn't qualify for a real estate license and they would ask her if they could qualify for a mortgage license. It was quickly evident that the Division needed the same rule on the mortgage side as well which is now effective.

The other Administrative Rule that the Division is working on is Rule 204 and 205, which this Commission has discussed dealing with record keeping. Rule 204 deals with what happens when a mortgage company goes out of business, who is responsible for keeping the records. Rule 204 will tell them that the owner of the company is responsible for keeping records. Rule 205 deals with keeping a copy of the license and a copy of a disclosure to the applicant in each loan file. Rule 205 is the Unprofessional Conduct rule so it makes it a violation or calls it Unprofessional Conduct not to do those things. Both of these rules have begun the rulemaking process.

Currently in Rule 205 there is something in there now which is a good thing and it deals with our sister industry, the Appraisal industry. We have had problems in the past where loan officers will order an appraisal and then for whatever reason not pay the appraiser. We continue to hear from the Appraiser community that this is more of a problem than it should be. The reason it's a problem is that loan officers will try and get around paying the appraiser because our current rules says they have to pay the appraiser for fees that are collected from a borrower. If the homeowner is paying the appraiser, which happens often, the loan officer doesn't want the appraiser coming after them twice. Unfortunately, we have had some loan officers that have tried to use that language as a loophole to say "prove that I ever collected it, and then maybe I'll give you the money." The Division is recommending that we tweak the rule to say if the loan officer has ordered the appraisal, and unless there is a contractual relationship between the homeowner or the borrower to pay the appraiser directly, then the loan officer has to pay. The concept and the purpose is that if someone is ordering an appraisal they are obligated to pay for it unless there is a contractual obligation.

John Norman brought up the topic of appraisals that were not USPAP compliant and the loan officer could not use it. The loan officer didn't feel as if he should have to pay for work that was not correct. Director Miller agreed with Mr. Norman. Director Miller said it would be fraud and the loan officer shouldn't have to pay. There needs to be some wording in the rule that explains a person shouldn't have to pay for an appraisal that is fraudulent. The language in the rule should track the statute.

Director Miller brought up Utah's standing in the MARI report. He has some questions about the data in the report and the way that the data is collected. He doesn't want to give anyone the impression that he doesn't think that Utah doesn't have a problem with mortgage fraud, because he thinks we do. The question is what are we going to do about it? Director Miller would like to

schedule a public hearing to allow in a formal way discussion of this issue, what people think the problems are, and what people think the solutions are. It is the Division's intention to schedule a hearing as soon as possible to get the input we need.

Director Miller said he will mention these four fronts: number one is Administrative (the Division of Real Estate). He wanted to commend Mr. Johnson and believes that we have the best investigators in the state when it comes to getting these problems handled, but we need the right tools and the right resources. With SB199 this Commission has tougher fining authority and it has the authority to go after those who are conducting unlicensed activity. It also means that with these tools we need to be focused in the right direction. Director Miller asked Mr. Johnson to put together a list of the top mortgage schemes we see in Utah, and the top complaints. When the two lists were put side by side, none of the top complaints have anything to do with mortgage fraud.

The second front is criminal. Director Miller wanted to recognize Representative Paul Ray who is here today. Representative Ray ran a bill last year to criminalize mortgage fraud and to add it to the RICO statute. Unfortunately, the bill did not pass and we have got to make sure that in the next legislative session that it absolutely passes. There are people engaged in mortgage fraud that belong behind bars, it's just that simple.

The third front is consumers. Consumers need to be better educated. The Division has started working with the Department to get funds to do public service announcements, and we are adding a section onto our website that will be dedicated solely to consumer education.

The fourth front is industry. Director Miller wants to thank the UMLA and the UAMB for their calls. As soon as Utah came out as number one on the MARI report for mortgage fraud, both John Norman and Cory Martin call Director Miller asking what they could do to help. He really appreciates the sincere offer to help and it is needed. He is looking forward to getting information out to help at the public hearing.

Enforcement Report – Dee Johnson

Mr. Johnson reported in March the Division received 30 written complaints, received 37 complaints that were screened (with no cases opened), no new cases were opened for investigation, no cases were closed, leaving 104 open case files.

The continuing education audit shows there were 6 cases opened, no cases were closed, leaving 6 open files.

Mr. Johnson said when the Division went to Provo on the Caravan; right next door to them was a real estate investment seminar. Mr. Johnson is not passing judgment on this gentleman's course. There are schools that are getting our licensees in trouble. The schools claim they are teaching the students how to release the unrecognized equity in the property. The unrecognized equity in the property is generally something that is created by an appraiser who is paid and willing to inflate the value so that they can over finance and take the money and run. That's a serious part of what the Division is reviewing. Historically, the Division has turned this information over to the FBI, the Attorney General, and anyone that will listen. In the future the Division will have SB199 to use.

Education/Licensing Report – Mark Fagergren

Mr. Fagergren appreciates the Caravan and the time people take to come out. There was a noticeable increase in the mortgage attendees. In St. George, the numbers seemed equivalent between real estate and mortgage. Last year it was not the case. Mortgage was underrepresented, even less attended than appraisers. Mr. Fagergren wanted to thank Ms. Wall for scheduling the facilities and rooms, accommodations, etc. to make everything work.

The newsletter will be at state mail tomorrow. It was a little late because of the Caravan. There are a number of worthwhile articles in this issue.

The statistics show the total number of licensees at just fewer than 9,000 active, a little over 3,000 inactive licensees, with a total of approximately 12,000 licensees in the mortgage business. There is growth from last year of 545. This number doesn't quite mesh with what we see at our front counter. The licensing personal report there is approximately 400 new applications per month. This would be the churning effect of those who are coming into the market and those leaving the market. Entities between April of 2006 and March of 2007 were 1,641 versus 1,148 which is drop of about 500 entities. The number of branches has almost shot up identical to the amount of entities no longer with us.

Mr. Fagergren announced at the end of this month our existing data base will be upgraded in terms of reports. The new system will be much more user friendly.

INFORMAL HEARINGS – CLOSED TO PUBLIC

10:05 Merrill Blake Edwards – Application for Renewal of License
Tasia Edwards, Wife

Chair Alley and Commissioner Bowyer disclosed that they have both worked with Ms. Edwards. There was no objection from Mr. Edwards that both Commissioners remain on the adjudicatory panel. The motion to set aside the February 21, 2007 Order in this matter was considered by the Commission and Division. If the decision is granted, a new hearing will be conducted.

An Executive Session was held from 10:12 to 10:14. The decision was made to continue with the hearing.

11:00 Andrew J. Moleff – Application for Renewal of License
Allowed to reschedule the hearing.

OPEN TO PUBLIC

11:18 Discussion on PLM and Licensee Compensation

Chair Alley welcomed the public back for a discussion on PLM and Licensee compensation. A question was asked as to who was actually doing a loan, was it the mortgage company or the financial company? There needs to be some clarification as to actually who is providing the services.

Mr. Norman said the Commission should ask themselves what types of things do you want the loan officer to do to protect the public? What types of things do you want a PLM to have his loan officers to protect the public? If the PLM is going to be truly responsible for the conduct of those loan officers, in that he is exercising reasonable supervision, how would you make someone responsible for the actions of someone who is independent?

Ms. Wismer said the legislature has answered the question for us. The act is quite clear in that the mortgage officer is not to receive consideration from anybody except the PLM that they are licensed with, and they further stated a mortgage officer shall conduct all business of residential mortgage loans through the principal lending manager with which the individual is licensed in the business name under which the principal lending manager is authorized by the Division to do business. The scheme of things is the PLM is licensed as ABC Mortgage all the mortgage officers better be doing their mortgage business as ABC Mortgage and through that principal lending manager. They can not be paid in any way but other than through their PLM.

Director Miller asked for some feedback from the public. The comment was made it was an Internal Revenue Service issue and it's a state issue. It is beyond the jurisdiction of the Division of Real Estate. Director Miller said the government should never use regulation to enforce a certain type of business model just because some people feel that this type of business model is better than another type of business model. Unless one can show a compelling reason and fraud is the most compelling reason to come up with.

Director Miller asked if there as a reason to believe that 1099 employees or companies that employee them as 1099 are going to commit more fraud than another type of company? Chair Alley commented it might be a case that involves adequate supervision. Is it a question of adequate supervision when the loan officer doesn't have any idea who the PLM actually is? Is there fraud or misrepresentation if I am hanging a shingle out saying I'm XYZ Marketing Company but performing all the duties of a loan officer? I'm still a loan officer for ABC Mortgage Company. Is that misrepresentation? Ms. Wismer said the legislature says you have to do all your business through the PLM you are licensed with and under the name of that PLM. It includes marketing, directly or indirectly.

Chair Alley asked if it was a problem if someone was marketing loans then they should be licensed? Ms. Wismer said unless they fit within some of the exemptions. He asked if we need to define it a little more clear with a rule that simply says "PLM's, you cannot compensate another entity for marketing services in regards to that originating that loan?" Ms. Wismer said if a PLM is compensating an unlicensed person or entity, they are violating the statute and the Division could take action against them.

Mr. Luna asked if someone is paying for services rendered, would a leads company or a processing company, "could we not pay for those services as well?" Do marketing companies really have these additional costs of paying for leads and processing, whatever the costs they have, and the dollar amount that the PLM has, part of it goes to the licensed mortgage officer as W-2 wages and the other part goes to pay real fees that have been incurred.

Director Miller said the Division needs to specify in more definite terms, what a PLM is responsible for as far as reasonable supervision.

Director Miller said we will have time in our next Commission meeting to hold a public hearing on the issue of mortgage fraud. It will be scheduled at 10:00 a.m.

CLOSED TO PUBLIC

A motion was made to go into Executive Session from 12:16 p.m. to 12:55 p.m.

INFORMAL HEARING: CLOSED TO PUBLIC

1:00 Kim Hartley – Application for License

CLOSED TO PUBLIC

A motion was made to go into Executive Session from 2:00 p.m. to 2:06 p.m.

A motion was passed to adjourn at 2:06 p.m.