

UTAH RESIDENTIAL MORTGAGE REGULATORY COMMISSION MEETING

Heber M. Wells Building
Second Floor Hearing Room

9:00 A.M.

June 6, 2007

MINUTES

STAFF MEMBERS PRESENT

Derek B. Miller, Division Director
Mark Fagergren, Education and Licensing Director
Dee Johnson, Enforcement Director
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

Alan Bowyer, Vice Chair
Rodney "Butch" Dailey, Commissioner
Heather MacKenzie, Commissioner
Maralee Jensen, Alternate Commissioner

GUESTS

Eva Rees	Dave Luna
Cory Martin	John Stevens
John Norman	Dale Asay
Jerry Anderson	Macey Buker
Mike Welker	Chad Ahearn
Paul Naylor	Howard Tolley
Curtis Cook	April Cook
David Crane	Jeremy Plouzek
Einar Schow	

The meeting on June 6, 2007 of the Utah Residential Mortgage Regulatory Commission began at 9:15 a.m. with Vice Chair Bowyer conducting.

Vice Chair Bowyer said that Chair Alley would not be attending today, and Commissioner McCan is off on maternity leave.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes - The minutes from the May 2, 2007 meeting were approved as written.

DIVISION REPORTS

Enforcement Report – Dee Johnson

Mr. Johnson reported in the month of May the Division received 17 written complaints, screened 8 complaints (with no case open), opened no new cases for investigations, closed 1 case, leaving 103 open case files.

The Continuing Education audit report shows there were 5 new audit cases opened for investigation, 4 cases were closed, leaving the 5 audit investigation cases open.

Mr. Johnson said the Division is in the process of hiring two new investigators; one for real estate and one for mortgage.

Director Miller asked Mr. Johnson to prepare two lists before the Division went on the Caravan 2007. One list was for the most serious complaints, and the other list was for the most common complaints. On the most serious complaint list fraud, misrepresentation, and forged documents were listed. The complaint list showed advertising, bait-and-switch, and altering documents. The Division has seen a trend of licensees turning in complaints when they see problems.

Education/Licensing Report – Mark Fagergren

Mr. Fagergren said the statistics shows a “churning” pattern, in which hundreds of new people and almost an equal number are expiring. The statistics show an increase of only 16 new applications. The Division looks at the overall growth as opposed to the new licensees, so this number is a little misleading.

A Division newsletter was sent out since our last meeting. In reviewing last month’s minutes on the criminal history denials, there are a fair number of people that don’t qualify for licensure. Mr. Fagergren mentioned to those in attendance today who are associated with schools, to advise individuals that if they have had a felony in the last five years, or a misdemeanor in the last three years involving moral turpitude, they are not going to be licensed and they are not going in front of the Commission for a hearing. This now parallels the Real Estate rule in effect.

Another point of discussion for those who are associated with schools is the exam asks whether or not a person has “ever” had any convictions. The

burden is on them to report if they have ever had any convictions. The Division will make a determination as to the severity and whether or not they will be meeting in front of the Commission, placed on probation, or ultimately licensed. In times past, there was a screening question in the candidate handbook that said in effect, have you ever done something wrong, and to list it. However, if the individual only had one and it was more than five years ago, you don't need to report it. Some schools are still indicating that concept. The individuals have the burden to report any convictions, and the schools should have people over report if they are in doubt.

The Mortgage Commission has authorized distance education for pre-license and CE for the mortgage officer as well as the PLM exam. The Real Estate industry, based on the success of the mortgage industry, have now authorized real estate pre-license education to be distance education.

Mr. Fagergren said each month the Division reviews a report to see what percentage of renewals are done on-line vs. those on paper. We are seeing that number slowly going up. The option of renewing on-line will not be available after this fall. Except in a few extreme cases, all renewals will be done on-line.

Director's Report – Derek Miller

The Division issued a few weeks ago a Fraud Alert. He wanted to thank the UAMB and the UMLA for helping to get the word out. Director Miller asked from the industry members what their immediate thoughts were. Commissioner Dailey said from the real estate side when they received the Alert, they made copies and distributed them to everyone. Their corporate attorney received it and forwarded the Alert to Commissioner Dailey. Many of the agents made comments saying they thought some of the descriptions fit what they were working on now.

Commissioner Bowyer said the timing was interesting. He had spoken with Mr. Johnson about a case that was similar to what was listed in the Alert. He said after he received the Alert he saw the topic was already mentioned.

Mr. Norman asked Mr. Johnson if the Division had received any additional complaints after the Alert was distributed. Mr. Johnson said we have received additional phone calls which he believes will bring in additional complaints.

Mr. Naylor said he has been answering calls from students and received two calls last week from attorneys in the industry asking for a copy of the Alert.

Director Miller said he appreciates the comments. It was intended to do the very things that have been discussed today. One is to help people identify fraud, and what it specifically is; and two, for people to recognize the scenario. When the Division went out on the Caravan earlier this year, Mr. Johnson would start talking about fraud and people thought it didn't happen in their area. When he got into the specifics of certain scenarios, people would come up to them later and say they were seeing fraud in their area.

One of the things Director Miller mentioned last month was the prosecution of fraud. Since then, he and Mr. Johnson have had the opportunity to meet with the U.S. Attorney and some of his assistants, particularly the Deputy U.S. Attorney who heads the Financial Crimes section. They also met with the Assistant U.S. Attorney who has been designated specifically to focus on criminal prosecution of real estate and mortgage fraud. Since that time, the U.S. Attorney's office has established a Mortgage Fraud Task Force. This Division is participating on that Task Force as well as many other administrative agencies, county prosecutors, Utah Attorney General's office, Department of Insurance, FBI, IRS, Department of Financial Institutions, and Department of Occupational and Professional Licensing. The sole purpose is to identify cases that can be prosecuted criminally. The Task Force is meeting every two weeks, with the second meeting held yesterday. Mr. Johnson reported back to Director Miller the purpose of the second meeting was to list amongst all of those agencies, the top five individuals names who should be prosecuted criminally. Specific investigative leads were made for each one of those people, and who would take the lead in prosecuting them. Some of those people were people who the Division has investigated in the past and have current investigations. We were happy to see there is progress being made in that arena. Director Miller believes it won't be too long before we start seeing indictments being issued, convening a Grand Jury, and arrests being made.

The topic of a PLM supervision rule was also discussed in the last meeting. Director Miller wants to report back that the Division has started to put some thoughts together with what the rule would look like. He is really looking forward to the public meeting when we can hear from all of those in attendance from the industry about what a PLM supervision rule should like. Specifically, a concern that Director Miller has, and the Commissioners share as well, is that we want to avoid the PLM statute was put in place a year ago from becoming just "window dressing" in that a person is just a PLM in name only. Based on what we have seen and heard there are too many instances where the PLM is not acting in the capacity of he/she is intended to act, which is to be a supervisor. An example is when the Commission has held administrative hearings, and the question comes up in each of those hearing of "who is your

PLM, or who will be your PLM?" Director Miller said he doesn't believe it is unfair to say in the majority of the time the person didn't even know. That is a big problem. How is supervision taking place when you don't even know the person's name. As an education tool, and as a tool for good PLM's to be able to look at, he firmly believes we need a rule that talks about what is expected of a Principal Lending Manager. To many of the people who take the PLM position seriously, it won't come as much of a surprise. On the other hand, to many people it will come as very much of a surprise when they see what is required of them. What he hopes to get out of the public hearing is how supervision can help to avoid fraud, and what should that supervision look like.

Director Miller mentioned the Division is hiring two new investigators, one for real estate and the other a mortgage investigator. We also are hiring, thanks directly to the Governor, a fraud investigator. This person will work specifically on the issue of real estate and mortgage fraud. He had the opportunity to meet with the Governor last week and the issue of fraud came up and he is concerned about it, just like we all are. The conclusion is that we need someone at the Division of Real Estate focused specifically on investigating fraud. The Governor committed the resources for us to be able to hire that person. It will be a move in the right direction.

Director Miller wanted to publicly, and for the record, thank Commissioner Alan Bowyer and Commissioner Pierre Alley. We are sad that Commissioner Alley couldn't be here today. Today will be the last Commission meeting for both, because their terms end at the end of this month. Next Commission meeting we will have two new mortgage commissioners. Those names will be announced at the next Commission meeting, as well as choosing a new chair and vice chair. Both Commissioner Alley and Commissioner Bowyer have sacrificed their time and given great leadership as the Chair and Vice Chair. Director Miller wanted to mention specifically that Commissioner Bowyer chaired the Mortgage Advertising Committee, which is just one of many things that the Commission was able to accomplish during their tenure.

PUBLIC HEARING

10:00 Mortgage Fraud

Vice Chair Bowyer welcomed those in attendance. He then turned the meeting over to Director Miller. Since there were many in attendance today, the Minutes will reflect the general comments given.

Director Miller said the meeting today was called so the Division could ask what types of problems the industry is seeing, and what possible solutions could be taken. One of the topics to be discussed would be the PLM supervision rule and what it might cover and what type of specific things should be focused. The purpose of this meeting is for the Division and Commission to hear from the public. He now opened the meeting for comments.

Commissioner MacKenzie suggested that loan processors might be participating in loan fraud. Processors are paid on commission only and their priority is to get the loan processed and get paid. She is suggesting that processors be licensed and be made to pass a test similar to loan officers. The processors can mask documents to get a loan through and the loan officer might not even know about it. Loan processors order all the documents and it would be easy to change the paperwork to get the loan through. Her comment is that everyone in the industry that is working on a loan should be licensed. Commissioner MacKenzie said a processor knows what it takes to get a loan processed, but not the ramifications of what happens when they do something wrong.

Director Miller asked if it was fair to assume that because the processors are not regulated they don't understand how serious it is to change documents to get the loan completed. He suggested they might have nothing to lose and not take the process seriously.

Commissioner MacKenzie suggested the processors be licensed and be required to take ethic courses so they would know the seriousness of their business. She believes continuing education would be a necessary requirement to keep the licensees updated and that more courses should be taught on mandatory mortgage fraud education.

A comment from the public was that their company has a new employee orientation every two weeks and all the new rules, announcements, etc. are discussed at that time. His company requires that all their in-house company processors be licensed as a loan officer and now know the consequences and responsibilities of keeping their licenses in good standing. This way if the processor needs to speak with the borrower they are perfectly legal because they are a licensed loan officer.

Mr. Naylor said he is constantly surprised at the lack of knowledge on new licensees as far as what the state and industry expects, especially the laws regulating the business and ethics, etc. These loan officers are coming in to his school totally uneducated and now are applying to be a PLM. He favors tightening up the system instead of inventing something new at this point. PLM

supervision is one way of tightening up the system.

A comment from the public was that talking about regulations is all fine but until there are some teeth behind it, it won't make a difference. Additional CE can be required, but until people in the industry see there is going to be something done if they are breaking the rules, nothing will happen. One thing he would like to see is better information and communication from the Division. He said on Nevada's website you can access disciplinary and work histories of all licensees. Typically, a bad loan officer/processor will bounce from company to company. If that information was communicated to the PLM's it would be for the PLM's to get them out of the industry.

Commissioner MacKenzie said she sees individuals that have been denied a loan officer license become processors. This puts the person back in the industry, working on files, etc. Mr. Johnson said historically, at one time, loan processors were included in the licensing law, and later were exempted. Now the topic is coming up again. He is interested in the position of the UAMB and UMLA on the licensing of processors and/or even underwriters. He said the Division does investigate a number of processors because they are actually acting as loan officers. The intent of the Mortgage Practices Act was to control loan origination, but he is interested in opinions on processors and underwriters and where they fit in the process and whether they should be licensed or not.

Mr. Schow said there is no question a processor has the ability to commit fraud, where a loan officer may or may not know about it because there is so much work going on behind the scenes. He believes it would be a good thing to require processors to be licensed. He recommends it be a separate license from a loan officer license and that it is implemented in such a way that it doesn't automatically kill off all the processors that the industry relies on to get their work done. They don't deal with financing so it wouldn't require the same type of test the loan officers are taking.

Mr. Fagergren said the Division gets comments frequently saying there are requirements and tests for all the professions, continuing education, pre-licensing education, etc. and the comments are does the industry really need another license? Will another layer really solve fraud?

Mr. Schow said he was actually one of the people arguing that processors do not need to be licensed, but now he is seeing the other side of the coin.

Commissioner Bowyer said until we prosecute for mortgage fraud and tell some of these people go to jail for what they are doing, a fine of \$2500 is just the

cost of doing business. Until people actually start going to jail for mortgage fraud, fraud will be rampant in this state, and Utah will continue to be number one or number two on the lists every year.

Mr. Schow said the UAMB is very concerned with mortgage fraud and they have a mortgage fraud task force. Commissioner Jensen asked what they were finding with their task force. He said they have a questionnaire going out to lenders, brokers, processors, industry members, as well as consumers, trying to specify. The UAMB is looking specifically at what mortgage brokers are doing. They are not looking at the overall fraud problem as much as the Division is, because they are trying to stop their circle of influence from perpetrating fraud.

A comment was made that mortgage fraud is coming from investments, non-owner occupied investment properties. People go to investment seminars where they hear a guy speak that says, "You can be rich, you can retire in real estate, and here's what you do." They are told to tell their loan officer to do a stated income approach and that you make \$10,000 per month and he will do the loan for you. It continues to happen over and over again. In their monthly newsletter they tell loan officers of new fraud styles out there, and in the new employee orientation, new employees are shown what types of fraud to look for. The PLM should know exactly what is going on in the industry so they can distribute the information to their loan officers.

Commissioner Bowyer asked for suggestions from the public for the Division to improve what they are doing. A comment was made that communication is very important. It is important for a PLM to know if a loan officer is moving from company to company, and if there has been any disciplinary action taken against the loan officer. Right now if you call the Division to try and find out disciplinary information, you can't get it. Why? The PLM has a responsibility to supervise, and if they can't get that information to make a decision, you are tying one of their hands behind their back.

Commissioner Bowyer said the Division's newsletter comes out quarterly, and perhaps there could be articles describing types of fraud they are seeing in a fraud section. A comment was that when someone discovers fraud occurring, they should contact the Division and tell them what they are seeing. There is no reason that we can't police our own industry.

Mr. Norman said perhaps there should be something in the PLM rule so the loan officers can understand, that their relationship just isn't with their client, they are working on behalf of the lender or for their broker. There is a fiduciary

relationship with the borrower, not just to make it fit into whatever box the underwriter wants. It fits because it fits, not because you made it fit. He also mentioned they would like to see a top-down approach. It says that a PLM is responsible for licensed and unlicensed activity, which would include the processors. The PLM rule should probably have some safe harbor, that if you do all of these things, then the PLM is going to be held responsible and they are going to lose their license for the actions of the people under them. There just needs to be supervision, not just another license.

Director Miller asked about the safe harbor approach. He asked what those things would be for the PLM.

Mr. Luna said when the law states that the PLM needs to exercise reasonable supervision, the Division would need to come out with what is considered "reasonable" supervision. Once that PLM has done all they could do, they could look at it and say what else could I have done? If we look at the real estate industry, once the broker has taught the agent all that he/she can do, and the agent is still a bad actor, then the broker is left in that safe harbor and they have done all they can do. The Division needs to come up with a rule that says this is what we consider reasonable supervision.

Director Miller asked those in attendance what they considered reasonable supervision. Commissioner Jensen said you can't have one PLM to 100 loan officers. A comment was made as to whether or not a PLM should review the files before they go to underwriting. Commissioner Jensen said maybe just the simple task of when the processor submits the file, she has to submit a copy of the loan officer and the PLM's license with the file, and then if the underwriters suspected anything, she would have both their licenses right there in the file. On the wholesale end, they didn't want to be responsible for the licensing. She disagrees with that because they would see the fraud if it was there.

Commissioner Dailey said on the real estate side it is called "active" supervision. From the broker's standpoint, when you are actively involved in supervision, you don't just get them a license, train them, and say "here you go, good luck." We are constantly involved on a daily basis reviewing the files and paperwork. He is coming from the real estate side as a broker, and believes that good brokers (or lenders in this case) do things right all the time. It seems that if we could take some steps to make it easier for the good lenders to review applications of licensees that may want to come to them, so they are not hiring bad loan officers, which would help. Collectively, as a real estate industry as well as a mortgage industry, let the good ones come together and as we see the new schemes that come along, pow wow together and get those

new schemes out to everybody so they can spot them, it would be easier to get them to the Division, it would go a long way. Just like the real estate industry, the bad continue to do bad things, the good don't. The bad in the mortgage industry are not going to care, they will hire anybody and if they do bad things, it's just considered the cost of doing business.

Mr. Johnson asked if it was reasonable to expect that a company would have had established rules if they had more than a single person working for them to use as guidelines. If that is the case, is it reasonable that somehow we require the PLM to see if their people are either in compliance with those rules/guidelines, or not working for them. The answer from the audience was absolutely.

Mr. Fagergren asked Commissioner Dailey if in the real estate business they are reviewing every file. Commissioner Dailey's answer was every file is reviewed by either the broker or the broker's assistant. The broker's assistant is trained and there is a checklist to be checked off, and if everything is not completed, the check is not issued and it doesn't close. Or, there is a red flag and it comes to either the broker or the assistant broker. Commissioner Dailey asked if it is something that an underwriter would look for, and the answer was yes. If the underwriters look at the files and see if there is fraud being committed, and a licensee is involved in it, the underwriter is not going to see that. A comment was made that the underwriters are considered the gatekeepers.

A comment was made that there should be a minimum percentage of the number of files to be reviewed. Perhaps that should be part of the PLM supervision that they need to review so many of the files on a quality assurance basis. Commissioner Dailey said on the real estate side, every file is reviewed on a new agent, and after that, it would be spot checked.

Commissioner MacKenzie said a broker/PLM can pull a MARI report on an employee. She agrees with the comment made earlier about the Division putting licensee the information on the website, and perhaps put stipulation information on the website. Mr. Fagergren said if someone was interested in reading the stipulation it isn't that difficult because it's public information.

A comment was made to have everyone look at Nevada's website and look at a licensee. It pulls up a history of every licensee, what company they have worked for, any activity that has happened with that license. If you need more information, you can contact their Division. The website is easy to use, and accessible to the public.

Director Miller said the Division has met with the public information officer for the Department and the person who is producing the public service/education. There will be three spots on television to bring awareness about loan fraud and where to go for help.

Mr. Johnson said that progress is being made in small steps, perhaps not as fast as some would like it. Strides are being made for criminal prosecution. The Division sends out announcements to others as well, and just as one of those small steps, he wanted to let everyone know that the idea of sharing someone else's credit has become a hot topic for the Division. We are seeing more and more of this fraud taking place. A company is currently advertising for asset rentals on how to up your scores. It may take a little longer than we would like, but it will come together and we will get these people out of our state. The biggest things the Division sees from individuals are not our licensees. There are people that are extremely well organized that are taking properties and inflating the value, financing them, and taking the money out. It is being brought to everyone's attention now, and the U.S. Attorney has told us and others that they want to make it a priority. He wanted to thank everyone for their help, and please don't stop.

Commissioner Bowyer wanted to thank all those who attended today and appreciated all the comments that were given. He said just because the meeting is over not to let the interaction die off.

Director Miller said he wanted to remind everyone that we are all on the same team, and we all have the same goal in mind. It is helpful to remember that the Division is seeking solutions to a common problem and we all on the same side.

INFORMAL HEARING – CLOSED TO PUBLIC

11:40 Andrew Moleff – Application for Renewal

CLOSED TO PUBLIC

A motion was made to go into Executive Session from 12:30 p.m. to 1:30 p.m.

INFORMAL HEARINGS: CLOSED TO PUBLIC

1:30 William Hochstedler – Application for License

1:53 Nicholas L. Cornett – Application for Renewal

2:25 Eric Weight – Application for PLM License

CLOSED TO PUBLIC

A motion was made to go into Executive Session from 3:13 p.m. to 3:26 p.m.

A motion was passed to adjourn at 3:27 p.m.