

**UTAH RESIDENTIAL MORTGAGE REGULATORY
COMMISSION MEETING**

Heber M. Wells Building
Room 210
9:00 AM
March 3, 2010

MINUTES

STAFF MEMBERS PRESENT

Deanna Sabey, Division Director
Dee Johnson, Enforcement Director
Jennie Jonsson, Hearing Officer
Traci Gundersen, Assistant Attorney General
Renda Christensen, Board Secretary
Jan Buchi, Mortgage Education Coordinator
Jody Colvin, Mortgage License Specialist

COMMISSION MEMBERS PRESENT

Lance Miller, Chair
Rodney "Butch" Dailey, Commissioner
Brigg Lewis, Commissioner
Holly Christensen, Commissioner

GUESTS

David Luna
Irene Kennedy
John Norman
Jeremy Plouzek
JR Thompson
Carrie Erikson
Ron Duyker

The meeting on March 3, 2010 of the Utah Residential Mortgage Regulatory Commission began at 9:00 a.m. with Chair Miller conducting.

Commissioner Jensen will be excused from the meeting today because she is out of town. Mr. Fagergren will also be excused from the meeting today.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes - The Minutes from the February 3, 2010 meeting were

approved as written.

DIVISION REPORTS

Director's Report – Deanna Sabey

Director Sabey gave the status of two bills presently in the legislature. HB-53 clarifies and defines loan rescue services, loan modification services, and also provides prohibited conduct for anyone engaging in those practices. The bill has been through the process, enrolled, and is waiting for the Governor's signature. The Division is supporting this bill.

The Division's bill, HB-275, is a clean-up bill and is now completed at the House level, is at the Senate level, and is on the calendar for the second reading.

Director Sabey wanted the Commission and the public to know of a situation that has been brought to the Division's attention, and would like to get some industry input. We received a letter from an individual who is a real estate sales agent and is very concerned about a practice that has been taking place in the short sale process. The issue is when the lender and the underwriter get the bank demand letter that states what the lien holder will agree to accept, with the term of releasing the lien unconditionally and requires HUD1 approval. This letter is being disclosed to lenders without the approval or consent of the original seller. These letters are making their way into the secondary mortgage market, and the underwriters are using these letters to force brokers and correspondent lenders to buy back the loan on a technical basis.

Director Sabey is asking if this is an issue in the industry where brokers and mortgage correspondents are being required to buy back loans on the basis of some information that was disclosed in the letter that originally would come from the bank.

Mr. Johnson said on the mortgage side it creates some problems, but on the real estate side for licensees there is a huge problem. If a demand letter is issued for a transaction that does not close, then we have a real estate licensee using that letter to negotiate an offering price for a subsequent buyer. The subsequent buyer may possibly pay more than that for the property, but it is already negotiated away. The lender may now lose money, and the seller may possibly lose money, because it has been disclosed that there is an acceptable price from the lien holder. The concern raised by the real estate licensee involves that letter going to the new lender, but Mr. Johnson also is concerned about that letter getting out and

being used to negotiate away the rights and money from the seller and the lender. It is entirely possible that the next buyer might offer more money. But when they have the demand letter, it cuts off the negotiations. Using a demand letter in this way would be a breach of the licensee's fiduciary duty.

Commissioner Dailey said those letters are dated for a specific timeframe and for a specific client. The letters should not be out there for others to see. Mr. Johnson said that once the knowledge is out, then the listing agent wants to sell a property, and the buyer's agent wants to get their buyer in for as little as possible. If the knowledge is out there, it can be used to take advantage, and it can put that lender and that seller at a disadvantage. Commissioner Dailey said it would be like a real estate agent taking a REPC out that had failed previously, and waiving it around.

Chair Miller stated this would cause problems in the secondary market when the letter was disclosed. The broader issue is if we should start assigning agency duties to originators. Mr. Johnson said there two things that have been mentioned previously before: it would be advantageous to have some kind of an agency relationship inserted on the mortgage side, thus a fiduciary duty, which when breached would be a violation; and, the other item is a trust account. We still have people who are putting money up front and not getting service and are not getting their money back. There is no actual responsibility on the part of the mortgage licensee on how to handle that money. Obviously, if they convert it to their own use, it is a dishonest act, but it would be helpful if we did have something addressing it. There is no accounting for the money. If we can show that the acts of that licensee and/or PLM were dishonest, we would take action. Currently, we have no specific statute or rule to refer to and it is harder for us to prove.

Ms. Jonsson said the Insurance Commission is looking at this issue of demand letters. Very frequently, escrow officers are the ones holding these letters. They, like us, would consider that in sharing it, it would be a violation of the privacy act. The Insurance Commission is looking at putting some kind of rule in place and would be interested in the Division having parallel rules. This way we don't create a situation where the escrow officer is saying he can't give out the letter, but it can be obtained from the real estate agent or the mortgage officer. The Insurance Commission has asked Ms. Jonsson to work up some language and get it to them for review. They are thinking of wording such as not being able to release the letter to anyone who is not a party in the transaction being discussed in the letter. That would mean they could not give it to the borrower's underwriter, and Ms. Jonsson's concern is that this would kill the deal. Another item would be

that they have to get the seller's informed consent before they can release the letter, and you may release it but you have to redact all information except for the property information, address, etc.

Chair Miller suggested this topic should be placed on the agenda for May to discuss the potential fiduciary duty rule as well as a trust account rule. He would like to have Ms. Jonsson work up a draft rule to review.

Director Sabey wanted to inform the Commission and public about a new website, preventloanscams.org. The Division has a link on our website under "Consumers". The sub link is loan modification compliance. This is a national website that is prepared by the Loan Modification Scam Prevention Network. The national compliance database is new, and it will be a good thing for the public.

Director Sabey pulled some information from this website about the dramatic increase in complaints with regard to foreclosure rescue service and loan modification counseling. In 2008, the FTC had one complaint on this matter. In 2009, the FTC had 8,000 complaints in this same area.

Enforcement Report – Dee Johnson

Mr. Johnson said there are no stipulations to review today.

In the month of February the Division received 16 complaints; screened 12 complaints; opened 2 cases; closed 6 cases; leaving the total number of mortgage cases at 41. Our mortgage investigators are doing an excellent job in managing their case loads. There is a backlog of screenings they are trying to get through, and the number of open cases will probably increase.

Director Sabey has mentioned what seems to be our main complaint of late: loan modifications, short sales, and foreclosure rescue schemes.

Education/Licensing Report – Jan Buchi

Ms. Buchi is covering today for Mr. Fagergren and reported on the NMLS status. There are 9,274 licensees (licensed entities, companies, and individuals) that need to transition on to NMLS. Since we opened to NMLS on January 4, 2010, there have been 1,741 filings. These are actions the regulators have to review, but that only equates to a little over 900 actual licensed entities. Each has numerous filings that go with it; they have to have a sponsorship, amendments, etc. We have 475 approved and 492 with some pending status we are waiting on. When the Division looks at this, and the number that has to transition before May 31, 2010, we are not quite

panicking yet, but we will be soon. There are a lot of licensees that have to transition in a short period of time. Even if we get 60%, that will still be a lot of people who still need to transition.

The common problem that delays transition is lack of sponsorship. The companies don't need to come on before May 31st, so some of this is dragging. We also have numerous filings where they have disclosed criminal history, and we have to wait for the documentation. We are encouraging them to get their documentation in as soon as they file, and licensees are supposed to submit this information within five days so it doesn't hold up the process. With our new licensees, we are having new people come on and submit a request for a license, but they haven't taken the education or the tests. We are asking providers to help us with this, and please tell new licensees to make sure to finish their education and take their tests, then get on NMLS and complete their filings.

Another glitch in the NMLS system is DBAs, which are licensed separately and independently from the company offices. NMLS isn't set up for this yet, because if the DBA tries to transition on, the EIN number will reflect back to the corporate EIN number. If NMLS knows you have already had a filing under the DBA's EIN, you can't complete this process. NMLS is working on this issue, and we think that they might come up something to help solve this problem. It will be a little more work on our side to track these with note-taking to keep things straight to keep the qualifying individual or the PLM that goes with each of the DBAs.

As of February 22, 2010, the new state component of the NMLS national exam has been available. As of December 31, 2009, all of our licensees who were going to get certification for taking the state exam and the pre-licensing education, will be able to certify later in the year when they have completed that portion of the requirement. But, from January 1st through February 21st, there have been some licensees taking our old state exam. There was some concern as to whether NMLS will us to allow us to certify that exam which fell outside of the certification time line, but we have been allowed to do that. All of those licensees who took the old state exam from January 1st to February 21st will have to be tracked, because they will not be certifying education, but they will be certifying the exam. The scores are only good for 90 days, so if they don't license before then, they will have to take the exam again.

The next electronic newsletter will be coming out on March 31, 2010. We have a wonderful chart that will allow a licensee to pick their date of

licensure and follow the steps to know exactly what they need to do to finish the transition. We lovingly refer to this as "the bible." Our push is to get everyone transitioned on before May 31st, because our next big deadline is from May 1st to June 30th which will be the certification process. The licensees must be transitioned on by that deadline of May 31st to be eligible to certify that they have completed both education hours and testing. Once they have transitioned on, they will get a notification out to get their NMLS number, which will allow the certification. That is why it is so important to have already transitioned on to NMLS.

The deadline for fingerprinting is by time of renewal or no later than the end of the year. A renewal will be held up until the fingerprinting is done. The licensee will register in NMLS, pay the fee, and then the system will provide the locations within the licensee's zip code area where fingerprinting is being done.

Industry and Commission Issues – Jennie Jonsson

Ms. Jonsson said the mortgage rules that we have been working on have been approved, submitted, published, and are out for public comments as of March 1, 2010. The public comment period will be ending March 31, 2010 and we should be able to do a vote in the April phone meeting to put those into effect.

The Division of Administrative Rules website has been quite a few months behind in getting the amendments on their website. To fix that problem, they have created what they call the "Seque page" that will show the text crossed out and underlined, but you can see what has been made effective but has not been incorporated into the nice clean body of rules. There is a link on their home page to the seque page that will help.

A motion was made and unanimously passed to close the public portion of the meeting at 9:50 a.m. for the upcoming hearings.

CLOSED TO PUBLIC

LICENSE/RENEWAL HEARINGS:

11:03 Trent Millington – Application for License

An Executive Session was held from 11:45 a.m. to 1:00 p.m.

1:06 Carlos Molina – Application for License
Chair Miller has recused himself from this hearing.

An Executive Session was held from 1:51 p.m. to 2:22 p.m.

CLOSED TO PUBLIC

Deliberation on Hearings

OPEN TO PUBLIC

2:00 The Commissioner Training scheduled for today will be rescheduled for next month.

A motion was passed unanimously to adjourn at 2:23 p.m.