

# UTAH RESIDENTIAL MORTGAGE REGULATORY COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 A.M.

April 6, 2011

## MINUTES

### STAFF MEMBERS PRESENT

Deanna Sabey, Division Director

Dee Johnson, Enforcement Director

Mark Fagergren, Director of Licensing and Education

Jennie Jonsson, Hearing Officer

Xanna Hardman, Assistant Attorney General

Renda Christensen, Board Secretary

Travis Cardwell, Investigator

Jan Buchi, Mortgage Education Coordinator

Jody Colvin, Mortgage License Specialist

Jill Allen, Assistant Board Secretary

### COMMISSION MEMBERS PRESENT

Lance Miller, Chair

Rodney "Butch" Dailey, Commissioner

Holly Christensen, Commissioner

Brigg Lewis, Commissioner

### GUESTS

Nathan Pierce

Ron Duyker

Irene Kennedy

Dan Hartle

Sara Saylor

Daniel McKay

Jeremy Plouzek

John Breivik

Commissioner Jensen has been excused from the meeting today.

Ms. Christensen was excused for jury duty.

The meeting on April 6, 2011 of the Utah Residential Mortgage Regulatory Commission began at 9:00 a.m. with Chair Miller conducting.

### PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes – A motion was made to approve the minutes for the March 2, 2011 meeting. Vote: Chair Miller, yes; Commissioner Lewis, yes; Commissioner Dailey, yes; Commissioner Christensen, yes. Motion carries.

## **DIVISION REPORTS**

### **Director's Report – Deanna Sabey**

Director Sabey said she will not be attending the hearings today because she is meeting with the Utah Appraisal Association. Mr. Johnson will be Acting Director for the scheduled hearings today.

The National Association of Mortgage Brokers and the National Association of Independent Housing Professionals filed an injunction to try and stop the April 1, 2011 trigger-date for the new broker compensation rule to go into effect. That stay was temporarily granted; however, last night the United States Court of Appeals issued an order saying the appellants have not satisfied the stringent standards required for a stay pending appeal. The stay was denied. The rule will go into effect as scheduled, and it remains to be seen if the appellants appeal the District Court's order even though their stay was denied. The rule will be effective April 5, 2011.

HB-91 will become effective on May 10, 2011. The Division will have a few things that need to be discussed as a result of that rule becoming law. The first is that the bill requires licensees maintain and safeguard the records the Division requires them to keep. The word "safeguard" is the key word that was added in to the statute. At some point in the future, we will need to define "safeguard." It is different from what is now in our existing law in the section of the Protection of Personal Information Act, and is different from Gramm-Leach-Bliley, which deals specifically with private consumer information. This law deals with records that licensees are required to keep as a result of the Division's rules.

The second issue our new law has created is across the board for all three industries (appraisal, mortgage, and real estate). As of May 10, 2011 licensees do not have to report Class C misdemeanors within the ten-day reporting requirement. Licensees were getting confused as to what they needed to report. The usual traffic tickets such as speeding tickets are usually Class C misdemeanors. The potential problem we see is that even though our reporting requirement has changed, licensees still have the NMLS questionnaire that they are required to comply with. Upon applying for a new license or a renewal, individuals will still have to disclose whether or not they have been convicted of or pled guilty to a misdemeanor involving fraud, financial statements, or omissions. The interesting question is that with no

ten-day reporting requirement anymore for Class C misdemeanors, but yet a disclosure requirement to report all convictions within ten days when the person fills out the questionnaire, is that creating some kind of confusion? Chair Miller said that technically we can still consider Class C misdemeanors when issuing or renewing a license, it would just not have to be disclosed within ten days.

Chair Miller asked if the attorney exemption passed. Director Sabey said it passed in form that basically would require the Division to give all loan modification complaints received to the Utah State Bar. The Division will be working closely with the Utah State Bar's Office of Professional Conduct, to help train them on what to look for, and educate them as to what we have seen in the past so they can be aware of that. The Division has a good working relationship with the Utah State Bar.

### **Enforcement Report – Dee Johnson**

Mr. Johnson introduced Travis Cardwell as the Division's new mortgage investigator. Mr. Cardwell has six years of experience in mortgages, and we are pleased to have the additional help for Mr. Everett.

Mr. Johnson reported in March the Division received 30 complaints; screened 19 complaints; opened 11 cases; closed 11 cases; leaving a total of 130 mortgage cases. Because of the amount of screenings we are receiving, we are also using the services of one and one-half other investigators to try and help us get caught up.

### **Stipulations for Review:**

ModifyUtah, Inc.

Justin Basso

Both respondents were given the opportunity to appear today, but have chosen not to.

### **Education/Licensing Report – Mark Fagergren**

Mr. Fagergren said the MLO's have increased by 50, but believes this number is a temporary licensing "spike" resulting from licensees completing license reinstatements. He thinks for a few months we will still see licensing number oscillation resulting from individuals who have failed to renew or reinstate.

The mortgage staff wanted Mr. Fagergren to mention that when people complete their 40-hour for Utah specific MLO education, that they be given

their education certificate. We have some licensing candidates that are told by their schools that they will "bank the hours." The schools seem to have confused two separate issues, because if it were CE we would have to have the hours banked. We actually have to have the education completion certificate when people are applying for their MLO license.

Mr. Fagergren discussed the topic of credit reports. You may recall that from November 1, 2010 through March 31, 2011 individuals had the opportunity to authorize a credit report. Of our total numbers of licensees we had 161 individuals who had not authorized the credit report as of last week. They were sent an e-mail telling them what would happen. There was a bounce-back on about 10 of those e-mails, and the staff called them personally to say they would be suspended if they don't authorize a credit report. Out of that 161, 45 licensees had authorized the credit report during this last week. As of this morning, there are 116 who are in the process of suspension. This is a SAFE Act requirement and we can't bypass the credit report. For whatever reason, those 116 individuals have completed everything except the credit report.

The Division's newsletter last week has an article on mortgage credit reports and analysis. This gives licensees some additional information regarding the Division's credit report evaluation process. The article indicates that the SAFE Act requires us to check credit reporting, but it also draws attention to the fact that the Division has rules that specifically flush out what will be reviewed. Specifically, those criteria are: outstanding civil judgments, tax liens, foreclosures, multiple social security numbers, child support arrearages, and bankruptcies. The article explains which of these items would trigger further inquiry by the Division staff, and if they have only a sole event, in most instances they need not worry.

Director Sabey wanted Mr. Fagergren to give the Commission specifics on what it is our staff is looking at. We have four staff members (3 mortgage, and 1 other) to try and review all of these credit reports by September 1, 2011. These individuals are now going through all of the approximately 3,300 licensees, and look at the report to review nine specific items. These staff members will review all the information received, and if necessary, forward it on to Ms. Jonsson to decide if there are complications.

The following list constitutes the criteria that the Division will review.

1. A foreclosure within the last three years;

2. A single bankruptcy in the last ten years;
3. Multiple foreclosures or bankruptcies: judgments, tax liens, foreclosures for multiple events. Have they entered into a formal payment plan and demonstration of proof of payments, a description of how the debts are being satisfied;
4. Civil judgments, a single judgment less than \$10,000;
5. Cumulative judgments over \$20,000;
6. Tax liens less than \$10,000 with no fraud involved;
7. Multiple social security numbers;
8. Different names;
9. Child support arrearage over \$10,000.

Ms. Jonsson said the Division has not reviewed financial responsibilities in the past, and we will take a gentle approach to dealing with these areas. Director Sabey said that different situations will be reviewed as they are found. These might include multiple judgments, liens, etc. Circumstances will really determine the outcome. This is a three-year recurring NMLS requirement and this year's evaluation must be completed by September 1, 2011. Chair Miller commended the Division staff for their efforts and diligence.

### **Industry and Commission Issues – Jennie Jonsson**

Ms. Jonsson said the rule amendments that have been out for public comment has closed on March 31, 2011. These are now in the one-week waiting period between the end of the effective date and the date on which they can be made effective. Just as a review, these were amendments to subsection R162-2c-201 where language was added to clarify that a principal lending manager may not simultaneously serve as a branch lending manager, and that an individual may not serve as a branch lending manager for more than one branch at any given time. In subsection 202, which is the qualifications for licensure, the language was pulled that had been in statute into rule so there will be some flexibility as the NMLS moves into the enforcement arena. We did not receive any written comments, and there

was only one phone call from a lady who thought the proposed amendments were great.

Ms. Jonsson has suggested that the effective date be held until May 10, 2011 because it is the same date the bill becomes effective. A motion was made to make these amendments effective on May 10, 2011. Vote: Chair Miller, yes; Commissioner Dailey, yes; Commissioner Lewis, yes; Commissioner Christensen, yes. Motion carries.

Ms. Jonsson shared some hypothetical situations regarding credit reports with the Commission to possibly set precedence for reviewing these reports. She has put several licensees on probation with the requirement that the probation may be lifted upon their satisfaction their tax liens or child support arrearage, or when they come up for renewal to show proof that they have made progress on these issues.

A five minute recess was taken before the first hearing from 9:55 a.m. to 10:00 a.m.

### **OPEN TO PUBLIC**

#### **LICENSE/RENEWAL HEARINGS:**

10:00 Daniel Hartle – Application for Renewal

There was a motion to close the meeting to discuss the character, professional competence, or physical and mental health of an individual. Vote: Chair Miller, yes; Commissioner Dailey, yes; Commissioner Lewis, yes; Commissioner Christensen, yes. Motion carries. Executive Session was held from 10:56 a.m. until 11:05 a.m.

11:05 Christopher Murphy – Application for License

There was a motion to close the meeting to discuss the character, professional competence, or physical and mental health of an individual. Vote: Chair Miller, yes; Commissioner Dailey, yes; Commissioner Lewis, yes; Commissioner Christensen, yes. Motion carries. Executive Session was held from 11:53 a.m. until 1:00 p.m.

1:00 John Breivik – Appeal of Order  
Division Witness: Vilath Kinnavongsa

3:00 Aaron Rasmussen – Appeal of Order

Mr. Rasmussen has chosen not to appeal his order, and the hearing was cancelled.

**CLOSED TO PUBLIC**

There was a motion to close the meeting to discuss the character, professional competence, or physical and mental health of an individual. Vote: Chair Miller, yes; Commissioner Dailey, yes; Commissioner Lewis, yes; Commissioner Christensen, yes. Motion carries. Executive Session was held from 2:24 p.m. until 2:35 p.m.

Review of Stipulations  
Deliberation on Hearings

**OPEN TO PUBLIC**

A motion was made to open the meeting: Vote: Chair Miller, yes; Commissioner Dailey, yes; Commissioner Christensen, yes; Commissioner Lewis, yes. Motion carries.

Results of Stipulations

ModifyUtah, Inc. - Approved  
Justin Basso - Approved

Ms. Jonsson asked the Commission what factors in a credit report would cause them to consider the denial or revocation of a license, or would want to see before them in a hearing. Chair Miller said that if it meets with the factors that we have previously evaluated such as: moral competency; integrity; if it affects their ability to participate in the industry; if it demonstrates a risk to the public; disregard for the law; not filing tax returns.

The Commission and Director Sabey agreed that Ms. Jonsson could bring a hypothetical situation for discussion before them, and that a decision could be reached without holding a hearing.

A motion was made to adjourn the meeting: Vote: Chair Miller, yes; Commissioner Dailey, yes; Commissioner Christensen, yes; Commissioner Lewis, yes. Motion carries. The meeting was adjourned at 2:56 p.m.