

UTAH RESIDENTIAL MORTGAGE REGULATORY COMMISSION MEETING

Heber M. Wells Building
Room 210
9:00 A.M.
July 6, 2011

MINUTES

STAFF MEMBERS PRESENT

Steve Eklund, Administrative Law Judge
Dee Johnson, Acting Director/Enforcement Director
Mark Fagergren, Director of Licensing and Education
Jennie Jonsson, Hearing Officer
Xanna Hardman, Assistant Attorney General
Judith Jensen, Assistant Attorney General
Renda Christensen, Board Secretary
Jan Buchi, Mortgage Education Coordinator
Travis Cardwell, Investigator

COMMISSION MEMBERS PRESENT

Lance Miller, Chair
Rodney "Butch" Dailey, Commissioner
Brigg Lewis, Commissioner
Steve Hiatt, Commissioner

GUESTS

Sara Saylor
Jeremy Plouzek
John G. Stevens
Melanie Thomas
Karolyn Michelsen

Director Sabey is attending a conference out of state and will not be attending today.

Commissioner Christensen was excused from the meeting today.

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

PLANNING AND ADMINISTRATIVE MATTERS

The Oath of Office was administered to Lance Miller and Steve A. Hiatt by Administrative Law Judge Steve Eklund. Mr. Miller has been reappointed for a second term, and Mr. Hiatt is a newly appointed Commissioner who will be replacing outgoing Maralee Jensen.

Elections for Chair and Vice Chair will be postponed until next month when Commissioner Christensen will be in attendance.

Approval of Minutes – There is not a quorum present today to be able to approve the minutes for the June 1, 2011 meeting. Commissioner Lewis was not at the June meeting, so he has recused himself from the vote today. Commissioner Hiatt was not able to vote on these minutes. The minutes for the June 1, 2001 meeting will be voted on in the August meeting.

DIVISION REPORTS

Director's Report – Dee Johnson and Jennie Jonsson

Director Sabey is out of town attending a convention for the Utah State Bar. Mr. Johnson and Ms. Jonsson will be giving Director Sabey's report. Ms. Jonsson said that it is time for the Division to begin looking at any changes that the Division might want to make for the next legislative session. Director Sabey has been compiling a list of items that will help fulfill the Governor's request that all agencies go through their regulations and determine what might potentially be reduced to impose less of a burden on small businesses.

In all three of the statutes (mortgage, real estate, and appraisal), our licensees are required to report to the Division if they have filed a personal or business bankruptcy. When the Division receives these notices, we make a note that the person has complied with the statute, but we don't take any action. In NMLS now, the MU4 form asks about bankruptcies and disclosure is made and considered under a financial responsibility licensing requirement. We think that it is overly burdensome to ask people to notify the Division within 10 days of filing a bankruptcy, so we would propose removing this requirement from the statute.

The Division has not heard from HUD regarding mortgage call reports. We have had some discussion with NMLS about the mortgage call reports, and Director Sabey's latest thought is to put into the statute a requirement that a licensed mortgage entity submit one call report per year. We will have to put in something regarding processors, and specific language about checking

credit reports every "X" years, and checking background reports every "X" number of years.

Mr. Johnson congratulated Chair Miller on being reappointed, and welcomed Commissioner Hiatt to the Commission. Commissioner Hiatt is a PLM that runs Wasatch Capital Mortgage, and has been in the mortgage industry since 1999. He is currently the Mayor of Kaysville City, and we are happy to have him with us on the Commission.

Mr. Johnson said "kudos" are to be given to Mr. Fagergren and his staff in getting out the current newsletter. Mr. Johnson received the electronic newsletter yesterday, and so everyone should have also received their notifications that the newsletter is out.

Enforcement Report – Dee Johnson

Mr. Johnson reported in the month of June the Division received 23 complaints; screened 12 complaints; opened 6 cases; closed 24 cases; leaving the total number of mortgage cases at 84. Mr. Johnson said enforcement has been going through some changes within the Division as to how we are handling things, so we have had a stall in screenings. They will all catch up probably in the month of July. The number of total mortgage cases will increase, possibly back up to 100, just because we have had a backlog with everything else we have been trying to handle.

Stipulations for Review:

Tyson Thacker

Christian Oliphant

Alpha Services and Processing, LLC fka Alpha Loan Processing, LLC

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

Mr. Johnson said the mortgage investigators have been doing a Herculean task to try and keep up with things the way they have been. We virtually are being overrun with complaints. Mr. Johnson had hoped with the slow down in the market we would also have a slow down in complaints, but this has not been the case. Currently, we have the highest number of complaints for the first six months of the year than we have ever had in a six-month period. The numbers are approximately 20% higher than last year for the same six month period, and the case load is growing. We will probably see the result of this in the next report.

Education/Licensing Report – Mark Fagergren

Mr. Fagergren said all licensees should have received their newsletter notifications on June 30, 2011. There are a number of articles this time, and a few pertain specifically to mortgage licensees. There is a reiteration of the CE they need to take. We reemphasized the fact that those who took the reinstatement CE (CE that licensees took between January 1, 2011 and February 28, 2011), will not count for their renewal this fall. They will have to take two sets of CE. The earlier set was for the prior year, and what they have to do now is for this renewal.

Under NMLS, a licensee doesn't have to take CE in the year that he or she takes the pre-license education. The newsletter gives an example of someone who took the pre-license education in the fall of 2010, but didn't get licensed until the spring of 2011. Under the NMLS rules, this person will have to have CE to renew this fall, because the pre-license education was completed in the prior year. Everything in NMLS is based on the year in which the education is completed.

If a person were to upgrade a license in Utah from an MLO to a PLM, the NMLS doesn't view that as a "new" license. In fact, if someone has had a license and it has lapsed for several years, and then the person got a new license, that still is not considered a "new" license. Therefore, this person would have to make up the CE for the year in which the license lapsed. Ms. Jonsson will have a draft rule for the meeting next month on the upgrade to a PLM.

Last month Mr. Fagergren mentioned there were 180 people who still hadn't provided information about items appear on their for credit reports. There are 28 licensees that we are still waiting on; 61 have been given a final notice to or they will be suspended; and 37 that have been suspended for failing to authorize a credit report or failed to submit documentation as requested. Two of these are still in review with Ms. Jonsson.

Mr. Fagergren said the licensing numbers are going up (by 84), and he is reporting that the numbers can't go down until the end of the year, when all licenses expire unless renewed. The only way they can go is up for the new people who have joined the system.

HUD came out earlier with their rule clarifying certain provisions of the SAFE Act, and Mr. Fagergren has been trying to review it. He has taken a few notes to discuss with the Commission. These final rules came out in anticipation of the new Consumer Financial Protection Bureau, which

President Obama and Congress established, and it goes into effect on the 21st of this month. This rule is intended to clarify things before mortgage regulation is handed off to this new bureau. There are some interesting discussions in the report about federalism and the cost of regulation by state for the SAFE Act.

Initially the report talked about loan originators by defining both the activities of a loan originator and the business of originating. Primarily this means to engage in the activities of a loan originator for compensation. The report makes a statement "that not everyone who acts as a loan originator is subject to SAFE Act licensing requirements." Some examples given of those who are exempt are property owners selling their own property; a parent providing financing to a child; a government entity employee associated with an affordable housing program; or a non-profit organization.

In order to trigger the licensing requirements, you must demonstrate both a commercial context for making money and a degree of habitualness in repeating the process. Our statute is based on an isolated, single act that requires a license. This rule doesn't do that. Our state law can exceed SAFE, and Mr. Fagergren still believes we are fine. It makes it difficult for regulators when they seem to infer a certain amount of activity is allowable, but they don't really define how much activity constitutes habitualness.

In times past, the Division has taken a non-profit organization at their word. We considered a 501c-3 tax exempt organization to be exempt and made no further inquiry. However, this rule gives some further clarification. The tax exempt status alone is not sufficient. HUD wants regulators to look at the organization's activities, their purposes, their incentive structures, and their loan products to determine if there is a commercial context. The report gives regulators a seven-step test to see if a non-profit organization is truly non-profit. These steps are:

1. are the organization a 501c-3 tax exempt organization;
2. does it promote affordable housing or education, etc.;
3. does it serve a public, i.e., charitable purpose;
4. as to the funding revenue and fees, do they incentivize loan officers to act other than in the best interest of their clients;
5. is there any incentive to employees to act other than in the best interest of their clients;
6. do borrowers receive favorable loan terms; and
7. are other state standards met.

A state regulatory agency must examine the books and activities of an

organization to determine if it is a bona fide non-profit organization. A person selling his/her own home is not necessarily required to register with SAFE, even if the seller has never lived in the property, unless there is a degree of habitualness that would indicate a commercial context. HUD is unable to state how often an individual may undertake such transactions before requisite habitualness is met. HUD does not define a loan originator to include individuals who specialize in loan modification. HUD notes that the new bureau has independent authority under Dodd-Frank to regulate loan modification and loan servicing. However, people who specialize in refinances are subject to licensing under the SAFE Act, because a refinance is a new loan, not a modified loan. The report also confirms that a person must pass the pre-licensing test after allowing a license to lapse for five years or more.

The report states that if an individual who takes an application but never offers or negotiates loan terms is not required to be licensed. Similarly, a person who makes an offer of loan terms without ever receiving directly or indirectly an application from the borrower is not covered under the Act. Attorneys who engage in loan modification (as an ancillary matter) on behalf of a client are not required to license. HUD does not allow attorneys or law firms to primarily focus on loan modifications; however, HUD emphasizes that the attorney's duties to his clients requires the attorney to further only his client's interests.

The report also talks about expungements. If a person has had a felony in the past seven years, he can't obtain a license. If he has had the felony expunged, the regulator can still consider it, but is not required to deny the license. Mr. Fagergren said that the Division doesn't review anything that is expunged prior to the person making an application. We deem the case to be sealed, and in essence, it never happened. If something is expunged after the application is received, then we still look at the incident even though it has been expunged.

The report confirms as correct the NMLS policies that are in place requiring CE to be taken in the year a license is renewed. NMLS always emphasizes conformity. However, HUD makes this statement in the report: "HUD will promote uniform minimum standards. However, the SAFE Act prefers that states implement and enforce licensing combined with the absence of preemptive authority over states that opt to exceed minimum standards. This means that there will inevitably be diversity in approaches among states." HUD wants to avoid incentivising a race to the bottom among states, which reciprocity would do.

Loan processors and underwriters are clearly not required to license under the SAFE Act when they provide clerical or support duties at the direction of, and subject to the supervision and instruction of, a state-licensed loan originator. There must be an actual nexus between a licensed loan originator's direction and supervision and the processor's or underwriter's performance, as opposed to a mere nominal relationship on an organizational chart.

Based on the fee schedules for similar activities, and assuming that more than 300,000 entities and individuals would register with the NMLS over the next five years, the CVO estimates that \$137 million in fees will be collected by the NMLS between 2009 and 2018. The CVO also estimates that the costs to the NMLS will be \$120 million.

HUD may examine any books, papers, records, or other data of any loan originator operating in any state that is subject to licensing. HUD may impose a civil penalty for each prohibited act or omission up to be \$25,000.

Industry and Commission Issues – Jennie Jonsson

Ms. Jonsson said she has two rules to give the Commission an update on. R162-2c-102, definitions, proposes definitions for "personal information" and "safeguard" to flesh out the new statutory requirement that mortgage entities not only keep their records but that they also safeguard any personal information in them. This is also in section 302 as well. The public comment period will end on August 1, 2011.

R162-2c-202, qualifications for licensure, proposed that there be a court finding of fraud, misrepresentation, or deceit in a misdemeanor in order for that case to act as an automatic disqualification for licensure. Outside of a finding of fraud, misrepresentation, or deceit, any case that seems to involve fraud etc. would come before the Commission for discussion. This has not been published. It will be published on July 15, 2011, and the comment period will run through August 15, 2011. The first possible effective date of August 22, 2011.

Ms. Jonsson doesn't know when the Division will get a response from NMLS as to whether or not a person ever has retake the 20-hour pre-licensing course. She said we can amend our rules to reflect what we know so far, and if the Commission would like to see what she has prepared, she can bring in draft language next month. We are holding off to see if we can get

that issue settled before we amend the rule dealing with reinstatement of a lapsed license.

A brief recess was taken from 9:41 a.m. to 9:49 a.m.

Ms. Jonsson continued with her report. She handed out a draft of R162-2c-204, license renewal, for the Commission to review. We have been waiting for an answer from NMLS on the changes that they are making, but we haven't gotten a response yet. We know that there will be some continuing education required by the NMLS in order for a person to reapply after a license lapses. What that is, we don't know. The question is whether we should leave this out of the rule entirely, or try and say something. The difficulty is that in Utah, we can't do what is called "prospective rulemaking." This means that we can't make a rule that says you must comply with whatever we decide in the future, or you will comply with whatever somebody else decides in the future.

NMLS only has the authority to pressure states to require what they want to require. Mr. Fagergren suggested that we write what our "best logical estimate" of what the NMLS rules will be in the next five years. Between December 31 and February 28 will require the individual to complete NMLS 8-hour reinstatement requirement. During this discussion it was decided we need definitions for "reinstatement," "expired license," and "lapsed license." Between February 28 and December 31, NMLS is leaving renewal requirements up to each state's discretion.

Currently, the Division has been treating these individuals as new applicants and requiring them to take the 40-hour Utah pre-licensing course. For the first 30 days after expiration, a person would take additional CE. Chair Miller suggested that, possibly, after a license has lapsed a full year a person would need to retake the Utah 40-hour course as a new licensee. In specific extenuating circumstances, Ms. Buchi can administratively override any CE the NMLS will require as reinstatement CE.

OPEN TO PUBLIC

LICENSE/RENEWAL HEARINGS:

10:04 Kevin Rowe – Application for Renewal

Mr. Hudak, Mr. Child, and Mr. James requested to have their hearings all together. Mr. Child is out of the country and has requested to have his

hearing by phone. Because Mr. James's application does not have exactly the same history, the Commission, Division, and Mr. James have all agreed to change the schedule for the meeting today. Mr. James will be heard first, and then Mr. Child and Mr. Hudak will be heard together.

11:07 David James – Application for License

12:07 Travis Hudak – Application for License

12:07 Michael Child – Application for License
Mr. Child has requested a phone hearing.
The Division tried to reach Mr. Child by phone and was unable to contact him. The hearing for Mr. Hudak was held separately.

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 Hiatt. An Executive Session was held from 1:03 p.m. to 1:23 p.m.

Deliberation of Stipulations
Deliberation on Hearings

OPEN TO PUBLIC

Results of Stipulations

Tyson Thacker - Approved

Christian Oliphant - Approved

Alpha Services and Processing, LLC fka Alpha Loan Processing, LLC - Approved

Industry and Commission Issues – Jennie Jonsson (Continued)

Further discussion was held on the draft rule. Ms. Jonsson asked the Commission for specific details on education/reinstatement.

If a person allows a license to expire on December 31, and wishes to reinstate it at some point in the next calendar year, the person would have to retake Utah's 40 hours, plus evidence completion of the CE that would be required for the renewal for the year in which the license expired. The person would also have to continue to satisfy all other licensing requirements. Ms. Jonsson will put the thoughts together that have been discussed today, and bring a draft rule back for review next month.

A motion was made to adjourn the meeting. Vote: Chair Miller, yes; Commissioner Lewis, yes; Commissioner Hiatt. The meeting adjourned at 1:45 p.m.