

## 2012 LEGISLATIVE UPDATE

### DIRECTOR'S MESSAGE



**Jonathan Stewart**

The 2012 Legislative Session has just concluded. The Division's Bill, H.B. 191 successfully passed. The Division would like to publicly thank Representative Gage Froerer and Senator Todd Weiler for sponsoring our bill. Our 2012 bill made changes to the Real Estate Licensing and Practices Act, the Utah Residential Mortgage Practices and Licensing Act, the Real Estate Appraiser Licensing and Certification Act, the Appraisal Management Company Registration and Regulation Act, and the Timeshare and Camp Resort Act. The majority of the changes will go into effect on May 8, 2012. There are a couple of code sections that will not become effective until July 1, 2012. If you have questions about when specific changes will take effect, please contact the Division. The following changes were included in H.B. 191:

#### **Real Estate Licensing and Practices Act**

- Unlawful conduct will apply to a person licensed or required to be licensed.
- Sales Agents will no longer be required to report personal bankruptcies to the Division within 10 days of filing.
- The 10-day criminal reporting requirement will apply only to:
  - o Felonies; and
  - o Misdemeanors related to theft and financial fraud.
- All licensing decisions based solely on criminal history will be made initially by the Division, appealable to the Commission.
- Definition of Principal Broker will be changed to specifically include foreclosure rescue.
- Certain provisions regarding foreclosure rescue will be removed from the grounds for disciplinary action section for licensees.

#### **Utah Residential Mortgage Practices and Licensing Act**

- Processors who operate as independent contractors will be required to be licensed.
- The Division will report all violations to the NMLS.
- Licensees will be required to include all closed loans in call reports, and licensed entities will be required to submit call reports to the NMLS quarterly.
- The 10-day criminal reporting requirement will apply only to:
  - o Felonies; and
  - o Misdemeanors related to theft and financial fraud.
- A general license category of "lending manager" with a single fee will be created.

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### Utah Residential Mortgage Practices and Licensing Act (cont.)

- All licensing decisions based solely on criminal history will be made initially by the Division, appealable to the Commission.
- The Commission will be able to approve lending manager licenses based on equivalent experience (i.e. at a depository institution) if statutory qualifications are not met.
- A licensee shall, upon the Division's request, make available to the Division for inspection and copying during normal business hours all records required to be maintained under the chapter.
- Referral fees will be defined and prohibited, and the Division will have authority to define by rule an incentive program.

### Real Estate Appraiser Licensing and Certification Act/ Appraisal Management Company Registration and Regulation Act

- New language will clarify that an appraiser may not appraise a property for which the appraiser has also acted under a real estate or mortgage license.
- Provisions related to the Division's approval of expert witnesses will be repealed.
- Licensees and trainees will no longer be required to report personal bankruptcies to the Division within 10 days of filing.
- The 10-day criminal reporting requirement will apply only to:
  - o Felonies; and
  - o Misdemeanors related to theft and financial fraud.
- Subsidiaries owned and controlled by a federally-regulated financial institution will be exempted from Appraisal Management Company registration requirements.
- Trigger for Appraisal Management Company registration will be modified so that a company must register if it:
  - o Orders more than 10 Utah appraisals in a year; or
  - o Maintains a panel of more than 15 Utah appraisers.

- New language will clarify that either the Board or the Division may issue a Cease and Desist Order, with a Division-issued order appealable to the Board.
- Appraisal Management Company prohibitions will be modified to prohibit coercion, extortion, intimidation, and bribery for any purpose related to an appraisal.
- An appraisal management company will be required to secure and maintain a surety bond with one or more corporate sureties authorized to do business in the state in the amount of at least \$25,000, as the Division provides by rule.

### Timeshare and Camp Resort Act

- New language will provide an exemption from registration requirements for managing associations when reselling inventory that was previously owned by the association and that has been re-acquired through deed in lieu, foreclosure, or quit claim deed.
- New language will clarify that a temporary permit allows a developer to sell as well as market interests.
- Rescission period will be changed from five calendar days to five business days.
- Dissemination of owner information will be restricted.
- New language will allow developers to use reservation agreements.

If you have any questions about these statutory changes, please review the statute and/or contact the Division for additional information. We hope these changes will help protect the public as well as make your careers successful in the coming years. We look forward to identifying additional changes we can make to address problems you may be dealing with.



# Loan Processors Must Be Licensed or Employed

Under the S.A.F.E. Act, loan processors are required to be licensed as mortgage loan originators if they work as independent contractors. A loan processor who is employed by a licensed mortgage entity is not required to hold an MLO license. The DRE amended the mortgage statute in the 2012 legislative session (House Bill 191, sponsored by Gage Froerer) to establish this requirement in Utah. Therefore, as of May 8, 2012, any individual who provides loan processing services as an independent contractor must hold an MLO license with the Division.

How do you know whether you are an employee or an independent contractor?

- If you work for a single company that is licensed with the DRE as a mortgage entity and are paid on a W2 basis, you are an employee. You are not required to obtain an MLO license.
- If you work for a single licensed mortgage entity and are paid on a 1099 basis, you are in sticky territory:
  - If your agreement with your employer gives you the right to offer loan processing services to other entities or to MLOs who are not sponsored by the entity, then you are an independent contractor. You must obtain an MLO license.
  - If you do not have the right to market your loan processing services outside of the licensed entity with which you have an employment agreement, then you are an employee. You are not required to obtain an MLO license. (And your employer is likely violating tax laws, workers' compensation laws, and unemployment benefit laws—but that is a separate issue.)
- If you contract with multiple licensed mortgage entities and/or individual MLOs as you see fit and are paid by each on a 1099 basis, then you are an independent contractor. You must obtain an MLO license.

If you decide to obtain an MLO license so that you may continue to operate independently as a loan processor, you are not required to find a licensed mortgage entity to sponsor your license. Rules soon to be promulgated, state that an individual who holds an unsponsored—or inactive—MLO license may engage in loan processing activities as either an employee or as an independent contractor. If you choose to go this route, you must be extremely careful that you restrict your activities to clerical work and that you do not communicate with a borrower or a lender in any manner that could be seen as taking an application, explaining or advertising a loan product, or negotiating a loan package. To perform these services, you must hold an active MLO license and be sponsored by a licensed mortgage entity.



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## Conflicts Over Appraisal Values -Two Different Perspectives-

Occurring on both a national and local level is a growing number of instances where striking differences of opinion occur over the value conclusions of residential real estate. Contrasting perspectives from real estate licensees and appraisers are frequently shared. Some of the viewpoints commonly discussed are expressed in this article. There are no consensus conclusions to resolve the differences, but there are definitely strong opinions regarding the reasons for these differences of opinion. The Division believes that each of these perspectives needs to be thoughtfully considered. Each situation should be evaluated after thorough evaluation of the unique facts and specific circumstances. General observations do not necessarily indicate that either position is either uniquely right or wrong. It is hoped that a better understanding of each profession's perspectives would contribute to a more productive dialog.

Real estate licensees commonly perceive that real estate appraisers are "causing a problem" in the marketplace by consistently undervaluing homes, rather than concluding that appraisers are merely reflecting actual market conditions. With active assistance and direction from real estate licensees, buyers and sellers competitively negotiate the sale of properties only to have an appraiser "undercut the transaction" by being overly cautious or too conservative in the final value conclusions. Many real estate licensees believe that appraisers who are under great pressure by appraisal management companies (AMCs) to complete appraisals quickly often provide deficient analysis of actual market conditions. In addition, there seems to be a sense among real estate professionals that, where regulators have historical access to appraiser's work product, appraisers tend to "play it safe" (by looking at the lower range of value) when it comes to appraising homes.

With AMC involvement in the appraisal of properties, many real estate licensees see appraisers attempting to "poach business" by entering into market areas throughout the state in which the appraiser has no professional competency or experience.

As you can expect, many appraisers share a different opinion. One appraiser stated that in the past year, 35% of his overall appraisal business resulted in lower market valuations than agent estimates (BPOs) or pending sales prices. This percentage constituted a noticeable increase over prior years. Real estate licensees were notified by this appraiser in advance and prior to the completion of the appraisal of the opportunity to submit comparable sales in support of the sales price. This

particular appraiser declared that, typically, agents submitted an average of six sales comparables per property. According to the appraiser, with rare exception, the sales submitted by real estate agents actually supported the lower appraised value.

Given the significant decline in real estate price levels, many sellers/owners are in denial about declining price levels, says another appraiser. In one instance, the appraisal included a list of 50 sales and listings located within

one mile of the subject property with all 50 having prices lower than the pending sale transaction without a single sale or listing priced at or above the pending sale. These facts clearly demonstrated and confirmed that the pending sale simply was not supported with factual market data.

Appraisers contrast their independent and objective value conclusions to real estate purchase agreements that represent a negotiated price between buyers and sellers by real estate licensees. Appraisers review and analyze sales data and make market-based adjustments in determining the market valuation method of appraising homes. Sales agents utilize a system of offsetting buyer and seller fiduciary duties to determine a fair sales price.



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The advocacy of agents representing sellers seeking the highest possible sales price, verses the advocacy of agents representing buyers to negotiate the lowest possible sales price historically yields arm's-length transactions at a fair market price.

Unfortunately, in some instances, appraisers believe that real estate licensee-negotiated sales prices may yield a contract price that is not reflective of market values. In most instances, the interaction between appraisers and real estate licensees works smoothly and efficiently. There are instances, however, where both real estate agent and appraiser conduct contributes to market inefficiencies.

There is more than a "grain of truth" to all of the statements of frustration expressed by the licensees above. There are no "easy fixes" to eliminate these problems. All licensees need to do their best to provide competent and professional services, and then to cooperate with affiliated industry licensees to help real estate markets to efficiently move forward.

Surprisingly, the Division rarely receives official complaints with documentation regarding the topics described above. Too often licensees prefer to only vocalize their frustrations and concerns, yet choose not to file a documented complaint where the Division can actually review documents and interview the parties to the transaction. When licensees verbalize complaints of impropriety without following up with documents and a detailed letter of explanation, Division regulators are prevented from evaluating the facts and taking corrective action (as may be necessary) to resolve, or at least mitigate, a problem.

Both industries need to recognize that each profession fulfills a different, yet very important, role in a healthy real estate marketplace. Going forward, it is important that we each rise to the professional performance level that has been the backbone of consumer support and confidence.



## **RULE DEVELOPMENTS SINCE DECEMBER 31, 2011**

### **AMC**

On April 1, 2012, the Division will publish in the [Utah State Bulletin](#) a new section to be added to the AMC rules. R162-2e-402 is proposed in order to outline the rules that the industry, Division, and Appraiser Board will be required to follow in informal adjudications of application and disciplinary matters involving appraisal management companies. Comments will be accepted through May 1, 2012.

### **MORTGAGE**

The Mortgage Commission is working on several amendments to the existing rules in order to further refine the licensing processes and procedures per NMLS functionality. The Commission is also considering rule amendments that would effect the following:

- reduce the number of hours required for the Utah-specific mortgage loan originator prelicensing course;
- allow companies to implement incentive programs for its licensed employees;
- require an applicant for a lending manager license to more thoroughly document origination experience; and
- establish that a loan processor working as an independent contractor must hold an MLO license, but is not required to have a licensed entity sponsor the license.

We anticipate publishing these amendments within the next month or so.

### **REAL ESTATE**

The Real Estate Commission is working on several amendments to the existing rules in order to clarify existing provisions and respond to industry trends. The amendments under consideration would effect the following:

- outline specific requirements for maintaining and reconciling real estate and property management trust accounts;
- specify procedures for reviewing an application submitted by an individual with criminal history involving a crime that contains an element of violence or physical coercion;
- clarify the principal broker's record-keeping requirements; and
- clarify when a change in brokerage ownership triggers the requirement to obtain a new entity registration from the Division.

We anticipate publishing these amendments within the next month or so.



## 2012 Mortgage License Reinstatement Period Ends

The 2012 mortgage license reinstatement period ended on 2/29/12. A total of 3,026 mortgage loan originators (including MLOs, PLMs, BLMS, and ALMs) have now renewed or reinstated their licenses. Of that total, 216 licensees reinstated their licenses between 1/1/12 and 2/29/12.

In addition, 663 mortgage entities and mortgage branches have now renewed or reinstated their licenses. Only 16 mortgage entities and mortgage branches reinstated their licenses between 1/1/12 and 2/29/12.

The reinstatement period proceeded in a calm and orderly fashion with most licensees better understanding the license renewal requirements thanks to better familiarity with the NMLS website and application procedure.

### MORTGAGE LICENSEES WHO FAILED TO REINSTATE

Any individuals who failed to renew by the end of December 2011, and who failed to reinstate by 2/29/12, must now complete the following requirements in order to relicense:

- If relicensing as a mortgage loan originator, complete the Utah 40-hour prelicensing education.
- If relicensing as a lending manager, submit to Utah DRE an experience documentation form, qualify to take the 40-hour PLM course, and successfully complete the course and pass the lending manager exam.
- Demonstrate having completed all required NMLS CE for the year in which the license expired.
- Reapply for a license, including the payment of an application fee.

Thanks for making the 2012 mortgage license renewal and reinstatement periods such a success! Division staff has enjoyed assisting many licensees over the past four months during the renewal and reinstatement periods.

## Do you have a question or a suggestion for the Division?

Do you have a question you have been wanting to ask an investigator but have not had the time to call? Do you have questions about your license? We want to hear about your ideas and suggestions. All questions and suggestions will be anonymous. Selected questions will be answered in the next newsletter.

Submit questions to:

[DREnewsletter@utah.gov](mailto:DREnewsletter@utah.gov)

**Question:** The article on property tax appeals got me thinking. I am a certified residential appraiser with experience in both the assessor's office and as an independent fee appraiser. In both settings we have opportunities to read and review the work of other appraisers. Do we as licensees have an obligation to report violations to the Division? If so, do we need to report all suspected violations or is there a threshold to determine how serious a violation is before we report it? Or can we just look the other way even if there is a pattern of behavior with certain appraisers? My concern is an attitude that says that it is OK to be conservative on appraisals even to the point of providing low values that really can't be supported anymore than a high value can.

**Answer:** Thank you for the inquiry to the Division of Real Estate. As an appraiser licensee, you are in a position to see issues in your field. When you see conduct that may be a violation of Utah or federal appraiser rules and regulations, you should report those to the Division. Then an investigator can review it and take whatever action is necessary after the proper investigation. There is no threshold of how serious the alleged violation might be. That will be determined by the Division's investigation.

As to the second part of your question, the Division is equally concerned about overly conservative appraisals as it is about inflated appraisals. As you know, there are many variables in every appraisal. But a pattern of deliberate conservative appraisals, not supported by fact, is just as serious a problem and would be addressed by the Division.

# FIRST QUARTER LICENSING & DISCIPLINARY ACTIONS



## STAFF SPOTLIGHT

**Kathy Archuleta**  
Licensing Specialist



*Please note that there are 30 days after the order date for a licensee or an applicant to file a request for agency review of the order, and that there are 30 days after the issuance of an order on review for a licensee or an applicant to file a petition for judicial review. Some of the orders listed may be within those appeal periods.*



Kathy has been working for the DRE as a licensing specialist for about 18 months; her two-year anniversary will be this September. Prior to being hired on at the Division, Kathy worked in the insurance industry for 16 years. As a licensing specialist, Kathy processes applications for both

individuals and companies and spends a great deal of time on the phone with licensees who have questions. Next to having terrific co-workers whom she considers her work family, helping our licensees is Kathy's favorite part of her job. She has excellent customer service skills and a solid all-around work ethic, so she has earned a reputation for being extremely pleasant and helpful. Kathy especially enjoys the Division's new LiveChat feature because it allows her to help multiple people all at the same time. Kathy particularly likes to work with licensees who ask her questions she's never heard before. She enjoys learning something new everyday and likes the challenge that comes with learning a new field.

Outside of work, Kathy enjoys BBQing with friends and family and engaging in almost any outdoor activity. She is married and has two children of the canine persuasion, a six-year-old Boston Terrier named Jasmine and an eight-year-old black lab named Shelby.



## Why Are We Having So Many Problems With Appraisals?

This article was contributed by Craig Morley, who chairs the Appraiser Board. The content represents Mr. Morley's personal opinions; it is not a statement from, nor a collaboration of, the Board.

There has been an increasing number of verbal criticisms or complaints about appraisals coming in below what appears to be the value of an “arm’s length” transaction. The question one might ask is, “Why is the appraised value of a home below the sales price, when the purchase was a non-distressed sale?”

Appraisers should realize that there is no safe harbor from disciplinary complaints by being “low” or providing “conservative” opinions of value. It is just as wrong to be “too low” as it is to be “too high”.

A below market valuation can help to facilitate short sale fraud because much of the fraud currently taking place relies upon below market valuations to facilitate the initial below market purchase, just as an inflated appraisal can help facilitate a fraudulent property flip.

### Recommendations to appraisers to avoid being the subject of a disciplinary complaint

#### 1) Proper Analysis of The Subject Purchase Price (Required by USPAP)

Remember the conditions for an arm’s length transaction—a typically motivated buyer and seller, property that has been exposed to the market for an adequate period of time, and a purchase involving a cash equivalent sales price. If these conditions exist, the sales price meets the definition of market value, and one would expect the appraised value to be consistent with the purchase price. Appraisers need to provide adequate analysis for any variance in the appraised value and an arm’s length purchase price.

#### 2) Selection of Truly Comparable Sales and Proper Verification of the Physical Features and Terms of Sale for those Sales

Many verbalized complaints often involve the use of inappropriate distressed sales as *comparables* and/or inadequate analysis between the *comparable sales* and the subject property.

In many instances, *comparable sales* are selected based solely upon their location, with inadequate consideration given to the physical features of those sales or the terms under which the “comparable sale” was sold. Remember that every sale is NOT a “market sale;” simply because a property sells in the neighborhood does NOT make it a comparable sale to the subject of the appraisal.

The principle of substitution is the foundation used in the development of the direct sales comparison of value. Not all sales in a neighborhood are comparable sales. To be comparable to the subject, the sale needs to be a reasonable substitute property, one that a typical buyer would consider to be a substitute property. The greater the difference between the sale and the subject, the less reliable the sale is as an indicator of value for the subject property. Simply because a recent sale occurs within a mile of the subject property, does not make the sale a reasonable substitute or comparable property. Proximity to the subject is important, but by no means constitutes the sole criterion for use as a sales comparable. Similar physical features of comparables in addition to proximity to the subject constitute the basis for selection as a sales comparison. In addition to selecting “comparables” based solely on proximity, some appraisers further aggravate the problem by not making proper adjustments to reflect the physical differences in properties in an effort to conform their adjustments to meet GSE adjustment guidelines rather than reflecting actual market differences.

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## Kagie's Korner

### What's Wrong With This Listing?

Mr. Jones is a real estate principal broker with Anywhere USA Realty, and is only licensed in the state of California. He is best friends with a Utah property owner who owns Dream Ranch, consisting of 150 acres of pristine mountain property. Mr. Jones signs a listing agreement with the Utah property owner (his friend) to market Dream Ranch. Mr. Jones subsequently enters into a sub agency agreement with Mr. John Doe, the principal broker for Golden Properties, a Utah real estate brokerage. Mr. Jones (the California principal broker) continues to market the Utah Dream ranch property under the Anywhere USA Realty name, with both Mr. Jones and Mr. John Doe as contacts for information about the ranch.

In the example described above, the California broker (Mr. Jones) is in violation of the Utah Real Estate Licensing and Practice Act because anyone who acts as a Principal Broker, Associate Broker, or Sales Agent is assisting a seller or buyer and, therefore, is required to be licensed with the State of Utah as per **61-2f-201(1): Unless a person is licensed under this chapter, it is unlawful for the person to do the following with respect to real estate located in this state:**

- (a) engage in the business of a principal broker, associate broker, or sales agent;**
- (b) act in the capacity of a principal broker, associate broker, or sales agent;**
- (c) advertise or assume to act as a principal broker, associate broker, or a sales agent.**

Mr. Jones and Anywhere USA Realty cannot enter into a listing agreement with the seller of a Utah property because they are not licensed with the State of Utah. Nor can they subsequently offer sub agency with a Utah licensee because they do not have a Utah license to list the property for sale. This places the Utah broker, Mr. John Doe, in a difficult position facing potential multiple licensing violations as he has co-brokered a Utah property for sale without a Utah licensee listing the property for sale.

The Division of Real Estate has conducted a number of investigations where an out-of-state brokerage that is only licensed in a state other than Utah, entered into a listing agreement with a Utah property owner to market Utah properties for sale. The unlicensed brokerage then contacts a Utah licensee and enters into a sub agency agreement with the Utah licensee in an attempt to sell the property, thinking that they can still be the listing agent for the seller and advertise the property. The Utah licensee does not check to see if the out-of-state brokerage is indeed licensed with the State of Utah.

When taking a sub agency, it is your responsibility to verify that the listing brokerage and agent have an active Utah license authorizing them to list and represent the seller.



### Problems with Appraisals?

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**An example will further illustrate the point.**

An appraiser's subject property is a two-story 3,200 square foot house with five bedrooms and three baths on a ½ acre lot in an attractive residential neighborhood. Few recent sales of similar two story homes are available within a mile of the subject, so the appraiser selects a 2,000 square foot rambler with three bedrooms and two baths within a mile of the subject property. The appraiser does not make adjustments for any difference in lot value when a careful analysis shows that the market will pay a premium for the larger lot. The appraiser makes a very small size adjustment to keep the size adjustment within the 10% single adjustment guideline.

## Problems with Appraisals?

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A typical buyer looking to purchase the subject property would not likely consider the significantly smaller house on a smaller lot with a significant difference in room count to be a substitute property even though the sale is within close proximity of the property. While this sale is within close distance to the subject, it is not comparable and will require very large adjustments outside the GSE adjustment guidelines to provide any kind of reasonable value conclusion.

### **Advice and Recommendation.**

Don't manipulate adjustments to meet adjustment guidelines. Don't select sales solely based on location. While comparable sales data may be limited in some areas, it may be appropriate to go further from the subject to use sales that are more comparable in physical features than to use sales that are not reasonable substitute properties. There are situations where it is difficult to obtain adequate sales data near the subject and where there are not substitute neighborhoods that typical buyers for the subject property would look to as alternatives. In these instances, appraisers need to support adjustments made to the comparable sales available based on the market. Some appraisers make the same routine adjustment for age and size for a manufactured home as they do for a large custom built home. Adjustments should reflect actual market derived differences in properties and not be based on an arbitrary rule of thumb.

### **Make adjustments for legitimate differences.**

Some appraisers seem to be reluctant to make adjustments for quality or condition or other features. One appraiser who was appraising a house that had recently

been updated with new carpet and granite counters told the seller that he would not make a quality or condition adjustment because the market would not pay for these upgraded features. The irony is that the property he was appraising was selling at a higher price than the older houses that did not have these features. It seemed apparent to everyone (but the appraiser) that most buyers would pay a premium for these upgraded features.

In another case the subject was situated on a quite cul de sac in an area with large attractive homes. The appraiser had selected comparable sales located on a busy street, but refused to make any kind of adjustment to reflect the difference. Another appraiser would not make an adjustment for a comparable sale that backed the freeway because he could not find "paired sales" to support the adjustment. Rather than do research and find support for the adjustment, no adjustment was made.

### **Know the condition of the comparable sales at the time of sale.**

Some appraisers adjust comparable sales based on the condition of the sales when they look at the homes rather than what the homes were like when they sold. Many REO properties are sold AS IS without any disclosure for the seller. Most buyers discount the price to accept the higher level of risk associated in the purchase of property that has been unoccupied for a period of time. It may be appropriate to make condition adjustments to these sales to reflect the condition of the property at the time of sale. Often these properties are renovated AFTER the purchase, and look much better when the appraiser drives by the comparable sale.



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## Problems with Appraisals?

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Regardless of the condition of the property when the appraiser drives by the comparable sale, complete and thorough analysis will reflect the actual condition at the time of sale. There are instances where the comparable sale had water damage in the basement, and as such the buyer significantly discounted the purchase price. However, when the appraiser used the sale as a “comparable sale” no consideration was given to the basement water damage. The result was that the *comparable* sale provided a much lower indicated value for the subject property. Usually if a sale is outside the context of the other sales in the area, it usually is because something influenced the lower price, and it might not be a good comparable sale for determining market value.

### 3) Determining Market Value

While many markets have distressed sales occurring in the market area, the appraiser must evaluate each of these sales to determine if the sale reflects market value or if the sales price was below market. Where distressed sales have sold below market, the sale either should not be used, or should not be given much weight in the final opinion of market value.

Where markets begin to recover, sales prices will begin to outpace historic sales prices. In a recovering market the inventory shrinks and asking prices increase with historic sales lagging behind current contract sales prices. The appraiser should consider the overall market in developing the final opinion of value.

Market value is NOT the average of the adjusted comparable sales. Some complaints are submitted where the appraiser selects sales that bracket the sales price, but provide an opinion of market value below the contract price, simply because the appraiser apparently averages the adjusted indicated value of the comparable sales. The final value determination should be based upon the sales that are most similar to the subject. Consideration should be given to the subject’s purchase price. The fact is that a property being appraised today will be used to establish market value for properties appraised tomorrow.

## Conclusion

There seems to be pressure on appraisers to get the appraisal to meet underwriting guidelines with less focus on if the value conclusion is reasonable and credible and reflects market value. **Proper analysis** of the subject and the comparable sales will result in credible appraisals that will likely result in fewer complaints. No appraiser will be disciplined by the Division for quality appraisals. The appraiser should strive to develop a credible opinion of market value and not simply provide an appraisal that an underwriter will accept because it meets location and adjustment guidelines. Appraisals that do NOT reflect actual market differences are misleading and violate USPAP.

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## Welcome New Mortgage Commissioner



## John T. Gonzales

“I’m honored to be appointed and serve on the mortgage commission and I look forward to upholding and protecting the values of our industry”.

John has been in the mortgage business for over 20 years. During that time, he has held several positions from set-up, to net branch owner. He spent nine years at National City Mortgage where he served as a loan closer, operations manager, originating branch manager and statewide district manager. He is currently the branch manager for Bank of Utah Mortgage Services in the South Towne Realtor Building. John also maintains personal loan production. He is a Utah native and a graduate of the College of Eastern Utah.

## *-From the Division Trust Account Auditor-* **Property Management Recommendations**

Questions often arise regarding property management best practices relating to the Division's statute and rules. The Division suggests the following:

1. All—and that means ALL—rents, fees, late fees, tenant or owner deposits, or other monies that come into your possession **MUST** be deposited to your property management trust account.

2. All—yes, ALL—payments of mortgages, utilities, or other costs related to the property or property maintenance, including your own commission, should be made in the form of a check from your property management trust account.

**HINT:** Avoid the temptation to set up automatic withdrawals from your trust account because you might not always have rental income to cover those withdrawals.

3. Remember that credit card costs, transient room tax, or other taxes are a cost of doing business and should be factored into rents and then passed through to the property manager rather than being charged separately to the client.

4. Use a double-entry accounting system and reconcile your records to your bank statement monthly. Remember that you may have as many trust accounts as you need, but each is subject to the same accounting requirements. Without a good accounting system in place, you will soon lose track of deposits, withdrawals, tenant deposits, owner deposits, and fees, with the result that you will likely fail to balance what **SHOULD BE** in your trust account(s) with what **IS** in your trust account(s).

5. Make sure that your property management agreement sets forth your responsibilities regarding late rental payments and the collection of late fees, including **WHO GETS** the late fees. Know your responsibilities for evictions, and consider receiving a portion of the lost tenant deposit for evicting a tenant.

**HINT:** Avoid the pitfall of charging your client for any service you render; instead, make sure your commission is fair and marketable, and take as much of the tenant fees and deposits that is fair to both you and the owner.

6. Build your business. If necessary, offer discounts for multiple properties, or entice your existing owners to add additional properties, and/or make referrals.

7. If you engage in both real estate sales and property management, keep in mind the administrative rules restricting a person who is employed by a property management company from listing or selling property, even if the person holds a sales agent license. Additionally, if possible, we recommend that you separate the two operations physically.

Remember that real estate sales clients and property management clients are different. The last thing you want is a real estate sales client overhearing a property management client complaining about a repair or a plumbing problem.

In the best property management operations, all problems or complaints are resolved the same day, and rental income is maximized at all times. Brokers concentrate on bringing in more business, while supervising the day-to-day operations. Remember, managing property competently and ethically requires attention to detail, prompt communication, and continuous oversight.



## Appraiser Qualification Criteria Increases January 1, 2015

The Appraisal Qualifications Board (AQB) has recently enacted some changes to licensing criteria that will take effect on January 1, 2015.

The following is a list of changes to qualification criteria that will be required for all appraiser candidates as of January 1, 2015. All candidates need to be aware and plan accordingly since there will be NO exceptions to the new AQB requirements after their implementation. These requirements include:

1. College level education will be required for all licensed appraisers – 30 semester credit hours from a college or university OR an associate's degree or higher in any field.
2. College level education will be required for all certified residential appraisers – bachelor's degree or higher in any field from an accredited college or university.
3. Trainee appraiser and supervisory appraiser course (required attendance) will be implemented with specifications for course content to be established by the AQB.

Some of the AQB changes have already been implemented within our existing Utah statute and rules. These changes include the following requirements:

1. Qualifying education and experience MUST be completed BEFORE sitting for the exam.
2. The "segmented approach" for completing and satisfying licensing criteria has been eliminated.
3. Appraisers are restricted from receiving credit for completing the same continuing education course more than once within a two-year licensing cycle.

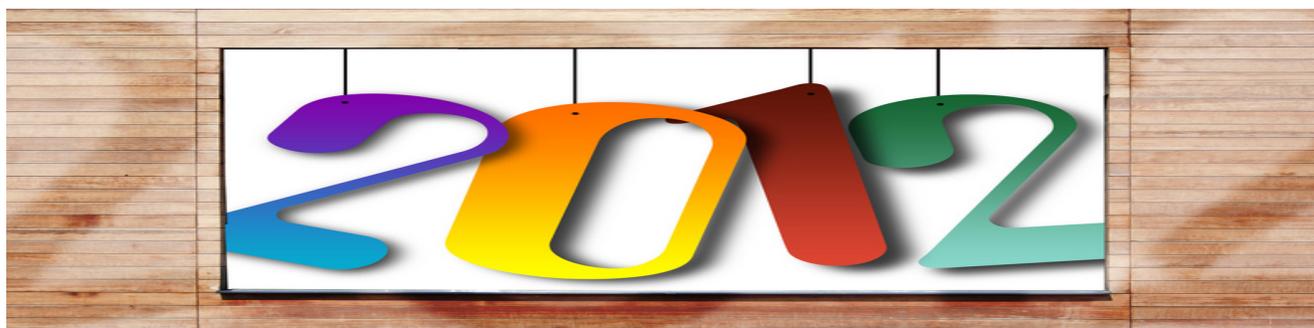
4. Certified general appraiser candidates are required to hold a bachelor's degree or higher in any field from an accredited college or university.
5. Trainee qualifying education must be completed within the five (5) year period prior to the date of application for a trainee appraiser credential.
6. Trainee appraisers are allowed to have more than one supervising certified appraiser.

Additional modifications to Utah's statute and rules will be made as needed in order to bring them into compliance with the AQB requirements prior to January 1, 2015.

### Best Wishes to Curtis Bullock

Curtis Bullock, who has been with the Utah Association of Realtors (UAR) for many years, has accepted a position as the Chief Executive Officer of the Salt Lake Board of Realtors. While he was with the UAR, Mr. Bullock worked closely with the Division in rule drafting, REPC revisions and many other endeavors, and was always an excellent resource and support. We wish him well in his new professional pursuits!

# DIVISION OF REAL ESTATE



## SPRING CARAVAN

The Division of Real Estate is offering a **FREE** 3 hour Continuing Education Core course for real estate and appraiser licensees. Mortgage licensees are invited however, due to NMLS changes we are unable to offer mortgage CE credit.

### PLEASE READ!!

There continues to be **NO CHARGE** to attend the Division CARAVAN. However, those who register and then fail to attend without canceling their scheduled reservation at least three days prior to the event will be charged a \$10.00 "NO SHOW" fee.

We will be introducing our new Division Director Jonathan Stewart. Division staff will be discussing current issues and hot topics facing the real estate, mortgage and appraiser industries. They will also be available for any questions and concerns you may have as a licensee.

\*Please complete the online registration by logging onto:

[www.realestate.utah.gov/caravan.html](http://www.realestate.utah.gov/caravan.html). Provide your name, license number,

location/date you wish to attend, along with a credit card number to reserve your seat.

**Provo, April 17, 2012**

9:00 am to Noon  
Covey Center for the Arts  
425 West Center Street

**Moab, May 15, 2012**

1:00 pm to 4:00 pm  
Grand Center  
182 North 500 West

**Logan, April 24, 2012**

1:00 pm to 4:00 pm  
Bridgerland Applied Technology College  
1301 North 600 West

**Richfield, May 16, 2012**

1:00 pm to 4:00 pm  
Sevier County Administrative Building  
250 North Main

**Park City, April 26, 2012**

9:00 am to Noon  
Park City Marriott  
1895 Sidewinder Dr.

**St. George, May 17, 2012**

9:00 am to Noon **or** 2:00 pm to 5:00 pm  
Dixie Center Auditorium  
1835 Convention Center Dr.

**Layton, May 1, 2012**

9:00 am to Noon **or** 2:00 pm to 5:00 pm  
Davis Convention Center  
1651 North 700 West

**~RESERVE YOUR SEAT NO LATER THAN  
THREE DAYS PRIOR TO THE CARAVAN~**

**~SEATING IS LIMITED~**

**~STAND BY SEATING IS NOT GUARANTEED~**