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Utah Department of Commerce

Division of Real Estate

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First Quarter 2016

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Director's Message

2016 Legislative Update

Jonathan Stewart

During the 2016 Legislative Session the Division worked with Representative Gage Froerer on two bills: HB402 Real Estate Amendments and HB72 Timeshare Amendments. For a summary of HB72 see page 16.

We continue to appreciate Representative Froerer's support and assistance in running legislation for the Division each year. We would also like to thank Chris Kyler and Mike Ostermiller for their assistance in getting HB402 through the session. This bill passed on the second to last day of the session and needed their help to get it prioritized. The changes made in HB402 will go into effect on May 10, 2016. This article provides highlights of changes made; if you have questions, please read the exact language found in the bill or contact the Division. There are areas that grant rulemaking authority. We encourage licensees to participate in the rulemaking process by attending commission or board meetings or providing comments to the Division.

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HB402 - http://le.utah.gov/~2016/bills/hbillint/HB0402.pdf

HB402 – Summary of Changes

Property Tax Appeal Assistance
59-2-1017

A licensed or certified appraiser may present or provide an opinion of value or provide consultation services, including presenting evidence or providing property tax information.

A licensed or certified appraiser who does not provide an opinion of value, but who provides consultation services by presenting evidence or providing property tax information may advocate for their client.

A licensed or certified appraiser may provide an opinion of value, present evidence, or provide tax information in a property tax appeal of the personal residence of the licensed or certified appraiser despite any personal bias.

Adjudicative Proceedings – Citation Authority
61-2-203

The Division may initiate an adjudicative proceeding through a citation.

A citation may only be issued for specific violations found in 61-2-203.

Except in cases where a licensee fails to comply with a citation, the Division may not use a citation to deny, place on probation, suspend, or revoke a license.

A citation can be appealed by providing notice to the Division within 20 calendar days of service of the citation.

The Division may only issue a citation within six months of the violation.

A citation fine may not exceed $1,000 for the first offense, and $2,000 for the second and subsequent offenses.

Residential Mortgage Practices and Licensing Act

Prohibited Conduct
61-2c-301

Act incompetently in a way that would fail to safeguard the interests of the public or conform to acceptable standards of the residential mortgage loan industry.

Sign or initial a document on behalf of another person, except for in a circumstance allowed by the Division by rule.

Disciplinary Action
61-2c-402

Clarify that the Division and Commission can take action against a person previously licensed for an act the person committed while licensed.

Allow the Division and Commission to reduce a lending manager license to a loan originator license.

Appraisal Management Company Registration and Regulation Act

Use of Licensed or Certified Appraisers
61-2e-301

Allow for rulemaking authority in relation to when use of a licensed or certified appraiser is appropriate, including how an assignment is offered to an appraiser.

Required Disclosure – Customary and Reasonable Compensation
61-2e-304

Require an appraisal management company to compensate appraisers with a customary and reasonable fee.

Allow for rulemaking authority dealing with customary and reasonable compensation.

Removal of Appraiser from Appraisal Panel
61-2e-306

Allow for rulemaking authority regarding the removal of an appraiser from a panel.

Prohibited Acts – Exclusions
61-2e-307

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Removing or threatening to remove an appraiser from the appraiser panel if an appraiser requires a reasonable extension in order to complete a credible appraisal.

Real Estate Licensing and Practices Act

Exempt Persons and Transactions
61-2f-202

Clarify that the power of attorney exemption must be unsolicited.

Disciplinary Action – Judicial Review
61-2f-404

Clarify that a person previously licensed remains responsible for actions committed while licensed.

Real Estate Appraiser Licensing and Certification Act

Contingent Fees
61-2g-406

A person who is not licensed may accept a contingent fee if they present or provide a price estimate or property tax information in a tax appeal.

A licensed or certified appraiser may charge a contingent fee when providing consultation services.

A person who charges a contingent fee shall clearly state in each oral statement the fact that the person is accepting contingent fee and whether the person is licensed or certified.

Clearly state in any written consultation report, summary, letter of transmittal, certification statement, price estimate, or property tax information that the document is prepared under a contingent fee and whether the person is licensed or certified.

Disciplinary Action – Grounds
61-2g-502

Clarify that a person previously licensed, certified, or registered remains responsible for acts committed while licensed, certified, or registered.

If you have any questions about these statutory changes, please contact the Division for additional information. We appreciate all those who provided feedback and suggestions that resulted in these changes.

2016 Mortgage 2-Hour Utah Law Course

Mortgage course providers were given an outline for the 2016 2-Hour Utah Law Course earlier this year. Course applications have been submitted and are currently in the review and approval process. Courses will be ready and available to licensees soon.

Course provider contact information and their approved method of instruction (online and/or classroom setting) will be available on the Division website as soon as it is available.

The content for this year's Utah specific CE course includes significant Legislative and Administrative Rule changes, as well as disciplinary actions and noteworthy causes for concern regarding several enforcement actions.

Mortgage licensees, avoid the late year rush by becoming the "first in your office" to complete your annually required Utah Mortgage CE Course.

HB177: Mortgage Lending Amendments

A bill mortgage licensees should be aware of is HB177. This was a bill sponsored by Representative Stanard. This bill essentially does two things:

1. Creates a definition for a Mortgage Lender; and,
2. Requires all entities that fit the new definition to register with the Department of Financial Institutions.

The bill defines a mortgage lender as an entity that performs each of the following related to originating a mortgage loan:

Taking and processing an application;

Providing a required disclosure;

In some circumstances, underwriting the mortgage loan and making the final credit approval decision;

Closing the mortgage loan in its own name;

Funding the mortgage loan; and

Selling the mortgage loan to an investor.

If your entity fits this new definition, starting May 10th, your entity will be required to register with the Department of Financial Institutions. **Mortgage lenders required to register with DFI are not exempt from the Division of Real Estate and <u>will continue to register with DRE</u> as well.**

Individuals and Entities that Failed to Timely Renew or Reinstate Their Mortgage Licenses

Any individual desiring to hold a mortgage license that did not renew or reinstate their license by February 28th, will need to contact the Division to determine the requirements that they will need to complete in order to be re-licensed. Expired entities can directly request to be licensed in the NMLS. The Division can be reached at 801-530-6747.

The broker notification system which notifies brokers of the status of agents affiliated with the broker has now been functioning for the past three months. The Division has received a number of positive communications from Principal Brokers (PBs), expressing their appreciation for the convenience and benefit of receiving these timely notices. Some minor enhancements have also been introduced in this system. Principal Brokers are now receiving renewal information on their Branch Brokers (BBs), along with the list of all other licensees affiliated with their brokerage. PBs obviously have the responsibility to supervise all licensed and unlicensed support staff working for their brokerage as well as their Branch Brokers.

In March there were still a relatively small, but significant number of PBs (34), that did not receive their broker notification because their email addresses "failed or were otherwise returned." This is a significant concern because these brokers do not have the capability to utilize the RELMS system to accept licensees desiring to affiliate or disassociate from their companies, verify the affiliation of their licensees, receive Division quarterly newsletters, or other notifications. Brokers who have not received these monthly notices should verify the accuracy of the email address they have indicated in their personal RELMS account.

Rule Developments Since January 1, 2016

To view and comment on any proposed or amended rules, please visit the Utah State Bulletin at http://www.rules.utah.gov/publicat/bulletin.htm

Appraisal Management

There are no proposed rule amendments under consideration for the appraisal management rules for the first quarter.

Appraisal

There are no proposed rule amendments under consideration for the appraisal rules for the first quarter.

Mortgage

There are no proposed rule amendments under consideration for the residential mortgage rules for the first quarter.

Real Estate

Rule 162-2f. The following rule sections were amended effective February 23, 2016:

1. R162-2f-102 – Definitions. The terms "closing gift" and "inducement gift" are defined;

2. R162-2f-401a – Affirmative Duties Required of All Licensed Individuals. The subsection referring to inducements is deleted;

3. R162-2f-401i – Standards for Real Estate Auctions. Auctioneers and auction companies must work with a licensed principal broker in advertising and conducting a real estate auction and may not advertise their services directly to an owner of real property who is already subject to an agency agreement;

4. R162-2f-401l – Gifts and inducements. New section allowing inducement gifts and closing gifts as those terms are defined in the definition section.

Timeshare and Camp Resort

There are no proposed rule amendments under consideration for the timeshare and camp resort rules for the first quarter.

Utah! Division of Real Estate

NEWS

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Staff Spotlight: Michael Page

Mike joined our team as a Mortgage Licensing Specialist last September and has been a great addition to our Division family! Keep reading to hear directly from Mike a little bit about his interests and hobbies:

I was born and raised here in Utah with brief stints in Washington State and Missouri when I was younger. I grew up in Bountiful and went to Bountiful High School and attended the U of U and Weber State University studying Business and History. I have one sister who lives in Shreveport Louisiana with her husband and 4 children. As for myself, my wife and I have been married for 22 years and have 3 kids. Two in High School and a 1st grader! Oh, and one orange and white tabby cat named Gus.

An interesting thing about me that not very many people know is that I play the Highland Bagpipes. I play and compete with the Wasatch & District Pipe Band all over the Western United States. I've had the opportunity to compete at the North American Pipe Band Championship in Ontario Canada, and have traveled to Scotland to compete at the World Pipe Band Championship back in 2011. I'm an avid fly fisherman, and outdoor enthusiast. I love history, and everything about the Old West! My family and I love to travel and spend time with our extended family whenever we get the chance, with Bear Lake as our favorite destination.

Before working for the State, I was employed for several different companies in the Retail industry for 20 years as a General Manager. Needless to say, I was DONE with retail hours and started looking for a change. I was fortunate enough to come on board with the Division of Real Estate as a Mortgage Licensing Specialist about 6 months ago and love every minute of it. It was a bit of a trial by fire at first in that I had no experience in the Mortgage industry, and it was learn as you go. I'm grateful to people like Mark Fagergren, Lark Martinez and Director Stewart who saw something in me and took that chance. I love my job, and work with a group of fantastic people! I couldn't be more grateful. Utah DRE rocks!

FIRST QUARTER LICENSING and DISCIPLINARY ACTIONS

Please note that Utah law allows 30 days for appeal of an order. Some of the actions below might be subject to this appeal right or currently under appeal.

APPRAISAL

SHAW, JAMES R., certified residential appraiser, Sandy, Utah. In a stipulated order dated January 27, 2016, Mr. Shaw admits to using comparable sales without making appropriate adjustments to the sales price and to incorrectly using and applying a multiple regression analysis. With regard to another appraisal assignment, he admits to using comparable sales from superior neighborhoods while failing to report available sales data for properties in the same development as the subject property. Mr. Shaw admits that in doing so, he violated USPAP. Mr. Shaw agreed to the revocation of his certified residential appraisal credential. Mr. Shaw has been issued the credential of a state-licensed appraiser. He also agreed to complete courses in basic appraisal procedures, basic appraisal principles, and the 15-hour USPAP course. Mr. Shaw shall be supervised in his performance of all appraisals for two years. Mr. Shaw is permanently prohibited from using multiple regression analysis in the performance of any appraisal reports. Case numbers AP-11-57308 and AP-12-58362

MORTGAGE

AITKEN, KIM LAREA, lending manager, North Salt Lake, Utah. In a February 25, 2016 order, Ms. Aitken's application for renewal as a lending manager was renewed and placed on probation for the renewal period due to criminal history. Case number MG-16-81060

APOLLO MORTGAGE COMPANY LC. mortgage entity, Bountiful, Utah. In a February 25, 2016 order, Apollo Mortgage Company's application for renewal as a mortgage entity was renewed on probation until charges against the entity's control person are resolved or a new control person is named. Case number MG-16-81064

BARROW, DON RICHARD, JR., mortgage loan originator, Park City, Utah. In a December 30, 2015 order, Mr. Barrow's license was renewed and placed on probation until he has a formalized plan to satisfy his tax arrearage. Case number MG-15-80055

BELLNAP, NORMAN V., mortgage loan originator, Orem, Utah. In a February 1, 2016 order, Mr. Belnap's license was renewed and immediately suspended for 30 days for failure to disclose past criminal history. Case number MG-16-80559

BRUENING, CELESTE, mortgage loan originator, South Jordan, Utah. In a stipulated order dated January 26, 2016, Ms. Bruening's license was placed on probation for the calendar year 2015 in resolution of case number MG-14-74357.

BRUENING, JOHN, JR., mortgage loan originator, South Jordan, Utah. In a stipulated order dated January 26, 2016, Mr. Bruening's license was placed on probation for the calendar year 2015 in resolution of case number MG-14-74356.

CARTWRIGHT, BRET R., mortgage loan originator, Draper, Utah. In a January 28, 2016 order, Mr. Cartwright's license was renewed and placed on probation until he has formalized a plan to satisfy his tax arrearage. Case number MG 16-80510

CHRISTENSEN, JON D., mortgage loan originator, Spanish Fork, Utah. In a December 22, 2015 order, Mr. Christensen's application for renewal of his license to practice as a mortgage loan originator was grant-

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ed and placed on probation for the renewal licensing period due to his criminal history. Case number MG-15-79963

CISNEY, RYAN, lending manager, Syracuse, Utah. In a stipulated order dated December 2, 2015, Mr. Cisney admitted to having violated Utah law which prohibits giving or receiving a referral fee or other compensation in exchange for a referral of residential mortgage business. Mr. Cisney agreed to pay a civil penalty of $1,000, to update his MU4 disclosure form, and to cooperate with the Division in any investigation related to the matter. Case number MG-15 78949

DAVIS, AARON MICHAEL, mortgage loan originator, Woods Cross, Utah. In a February 9, 2016 order, Mr. Davis's application for licensure as a mortgage loan originator was granted and placed on probation for the initial licensing period due to his criminal history. Case number MG-16-80741

DEELSTRA, JAN, mortgage loan originator, South Jordan, Utah. In a February 11, 2016 order, Ms. Deelstra's application for licensure as a mortgage loan originator was granted and placed on probation for the initial licensing period due to tax liens. Case number MG-16 80773

GARRETT, ADAM RUSSELL, mortgage loan originator, Columbia, Missouri. In a December 22, 2015 order, Mr. Garrett's application for licensure as a mortgage loan originator was granted and placed on probation for the initial licensing period due to his criminal history. Case number MG-15-79961

GONZALEZ, ROBERT JR., mortgage loan originator, Tustin, California. In a February 26, 2016 order, Mr. Gonzalez's application for licensure as a mortgage loan originator was granted and placed on probation for the initial licensing period due to his criminal history. Case number MG-16-81070

HARWARD, JOEL R., mortgage loan originator, Elk Ridge, Utah. In a stipulated order dated February 3, 2016, Mr. Harward admitted to having violated Utah law which precludes the making of a false statement or representation in a residential mortgage loan transaction, regardless of whether the loan closes. Mr. Harward agreed to pay a civil penalty of $1,000 and to update his MU4 disclosure form. Case number MG-15 75159

HOLFERTY, RYAN R., mortgage loan originator, Salt Lake City, Utah. In a stipulated order dated December 30, 2015, Mr. Holferty admitted that although he disclosed a previous bankruptcy, he failed to do so within 10 business days as required by Utah law. Mr. Holferty agreed to pay a civil penalty of $250. Case number MG-15-79894

JESSOP, THOMAS, lending manager, San Clemente, California. In a stipulated order dated December 30, 2015, Mr. Jessop admitted that although he disclosed a previous bankruptcy, he failed to do so within 10 business days as required by Utah law. Mr. Jessop agreed to pay a civil penalty of $250. Case number MG-15-79898

KELLEY, WAYNE C. JR., mortgage loan originator, Midway, Utah. In a stipulated order dated January 6, 2016, Mr. Kelley admitted that although he disclosed a previous bankruptcy, he failed to do so within 10 business days as required by Utah law. Mr. Kelley agreed to pay a civil penalty of $250. Case number MG-16-80080

LIRA, PEDRO, lending manager, Salt Lake City, Utah. In a February 10, 2016, order Mr. Lira's license was renewed and immediately suspended for 30 days for misrepresenting in his application to renew his license that he had not filed for bankruptcy in the past 10 years. Following the suspension, Mr. Lira's license will be on probation for the remainder of the renewal period. Case number MG-16-80754

MARKOSIAN, CHRISTOPHER THOMAS, mortgage loan originator, Sandy, Utah. In a January 21, 2016, order, Mr. Markosian's application to renew his mortgage loan originator license was granted and placed on pro-

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bation for the licensing period due to his criminal history. Case number MG-16-80291

MARTIN, JOHN ROGERS, mortgage loan originator, Draper, Utah. In a January 16, 2016 order, Mr. Martin's application for licensure as a mortgage loan originator was denied because of a permanent injunction entered against him by the Utah Securities Board and for misrepresentations and omissions made in connection with the offer and sale of a security in violation of the Securities Act. Case number MG-16-80388

NIELSEN, GARY C., lending manager, Bountiful, Utah. In a February 9, 2016 order, Mr. Nielsen's application for reinstatement of his license to practice as a lending manager was granted and placed on probation for pending criminal charges. Case number MG-16-80715

OLPIN, STEVE N., mortgage loan originator, Sandy, Utah. In a January 27, 2016 order, Mr. Olpin's license was renewed and placed on probation until he has formalized a plan to satisfy his tax arrearage. Case number MG-16-80492

OSSOLA, MICHAEL, unlicensed, Riverton, Utah. In a stipulated order dated December 30, 2016, Mr. Ossola admitted to having violated Utah law by engaging in loan modification assistance without being licensed. Mr. Ossola agreed to discontinue providing loan modification assistance and to pay a civil penalty of $2,500. Case number MG-15-78210

PARKS, LINDY, mortgage loan originator, Salt Lake City, Utah. In a stipulated order dated January 6, 2016, Ms. Parks admitted that she misrepresented in her application to renew her license that she had not filed for bankruptcy in the past 10 years. Ms. Parks agreed to pay a civil penalty of $500. Case number MG-16-80877

PITCHER, KENT, mortgage loan originator, Layton, Utah. In a February 1, 2016 order, Mr. Pitcher's license was renewed and immediately suspended for 30 days for misrepresenting in his application to renew his license that he has not filed for bankruptcy in the past 10 years. Following the suspension, Mr. Pitcher's license will be on probation for the remainder of the renewal period. Case number MG-16-80560

REYNOLDS, MICHAEL CRAIG, II, mortgage loan originator, Huntington Beach, California. In a January 28, 2016 order, Mr. Reynolds's license was renewed and placed on probation until he has formalized a plan to satisfy his tax arrearage. Case number MG-16-80537

RUSSON, ANGIE R., mortgage loan originator, Layton, Utah. In a stipulated order dated January 6, 2016, Ms. Russon admitted that she misrepresented in her application to renew her license that she had not filed for bankruptcy in the past 10 years. Ms. Russon's license was renewed and she agreed to pay a civil penalty of $500. Case number MG-16-80081

SIMPSON, BRIAN, mortgage loan originator, American Fork, Utah. In a stipulated order dated February 3, 2016, Mr. Simpson admitted that he did not disclose past criminal charges in his application to renew his license. His failure to disclose is a violation of Utah law. Mr. Simpson's license was renewed and he agreed to pay a civil penalty of $500. Case number MG-16 80568

SMITH, BRAD L., mortgage loan originator, Salt Lake City, Utah. In a December 30, 2015 order, Mr. Smith's license was renewed and placed on probation until he has formalized a plan to satisfy his tax arrearage. Case number MG-15-80056

SMITH, CHRISTOPHER DAVID, mortgage loan originator, Novi, Michigan. In a stipulated order dated December 2, 2015, Mr. Smith admitted that he did not disclose pending criminal charges in his application to renew his license. His failure to disclose the charges is a violation of Utah law. Mr. Smith agreed to pay a civil penalty of $500. Case number MG-15 79660

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TANG, DARRON, lending manager, San Leandro, California. In a February 3, 2016 order, Mr. Tang's license was renewed and placed on probation until he has formalized a plan to satisfy his tax arrearage. Case number MG-16-80608

TIDWELL, MICHAEL B., lending manager, Bountiful, Utah. In a February 3, 2016 order, Mr. Tidwell's license was renewed and placed on probation until he has paid the tax due or formalized a plan to satisfy his tax arrearage. Case number MG 16-80613

WEIR, NICHOLOUS J., mortgage loan originator, Sandy, Utah. In a January 29, 2016 order, Mr. Weir's license was renewed and placed on probation until he has formalized a plan to satisfy his tax arrearage. Case number MG-16-80550

REAL ESTATE

APARICIO, ALICIA ANA, sales agent, Ogden, Utah. In a January 22, 2016 order, Ms. Aparicio's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80407

BAQUE, JOHN, sales agent, Salt Lake City, Utah. In a December 3, 2015 order, Mr. Baque's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-79703

BEHNKE, LAURA, sales agent, Park City, Utah. In a February 4, 2016 order, Ms. Behnke's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80652

BLACKHURST, LAURIE, sales agent, Linden, Utah. In a December 22, 2015 order, Ms. Blackhurst's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-79989

BOONE, JASON, sales agent, Salt Lake City, Utah. In a December 29, 2015 order, Mr. Boone's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80036

BRACY, ASHLEY B., sales agent, Bountiful, Utah. In a January 14, 2016 order, Ms. Bracy's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-80272

BURNINGHAM, CHERYL, sales agent, Sandy, Utah. In a February 17, 2016 order, Ms. Burningham's license was renewed and placed on probation for the renewal period due to the revocation of her notary commission. Case number RE-16 880806

CARLSON, JOEL D., sales agent, Salt Lake City, Utah. In a December 4, 2015 order, Mr. Carlson's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-79724

CHACON, ADAM THEODORE, sales agent, Salt Lake City, Utah. In a February 29, 2016 order, Mr. Chacon's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-81117

CLARK, JEFFREY, sales agent, South Jordan, Utah. In a February 16, 2016 order, Mr. Clark's license was granted, immediately suspended for 30 days, and thereafter placed on probation for the remainder of the initial licensing period due to criminal history. Case number RE-16-80818

CREWS, TANNER B., sales agent, Roy, Utah. In a February 9, 2016 order, Mr. Crews's license was granted and placed on probation for the initial licensing period and the pendency of criminal proceedings due to criminal history and a pending criminal charge. Case number RE-16-80726

DIAZ, MARCO, sales agent, South Jordan, Utah. In a De-

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cember 3, 2015 order, Mr. Diaz's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-79718

DUVALL, SCOTT, sales agent, Ogden, Utah. In a January 15, 2016, order, Mr. DuVall's application for licensure was denied due to criminal history. Case number RE-16-80274

FLEMING, ANDREW TOD, sales agent, South Jordan, Utah. In a December 10, 2015 order, Mr. Fleming's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-79740

FOX, J. DANIEL, principal broker, Sandy, Utah. In a February 26, 2016 order, Mr. Fox's license was renewed and placed on probation for the renewal period due to his failure to disclose an abstract of judgment entered against him in a civil case. Case number RE-14-69658

GARRETT, STEPHEN L., sales agent, Draper, Utah. In a February 18, 2016 order, Mr. Garrett's license was reinstated and placed on probation for the renewal period due to criminal history. Case number RE-16-80890

GLAITTLI, BROOKE, sales agent, Riverton, Utah. In a stipulated order dated December 16, 2015, Ms. Glaittli admitted to marketing residential properties for sale without including the name of her brokerage in the advertising in violation of Utah regulations. Ms. Glaittli agreed to pay a civil penalty of $150. Case numbers RE-14-70362, RE-14-72624, and RE-15 78230

GOLDMAN, SANDRA, associate broker, Park City, Utah. In a stipulated order dated February 17, 2016, Ms. Goldman is alleged to have failed to update a seller's property condition disclosure in a transaction in which she had an ownership interest which would be a violation of Utah law. Ms. Goldman agreed to pay a civil penalty of $500 and complete additional continuing education. Case number RE-14-71940

HARDY, BRUCE, associate broker, St. George, Utah. In a December 29, 2015 order, Mr. Hardy's license was renewed and placed on probation for the renewal period due to a pending criminal charge. Case number RE-15-80032

HELM, DAVID C., II, principal broker, Stansbury Park, Utah. In a December 16, 2015 order, Mr. Helm's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-15 79654

HELM, JACK ALLEN, sales agent, Cottonwood Heights, Utah. In a December 29, 2015 order, Mr. Helm's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80033

HOLSMAN, TODD R., sales agent, Elk Ridge, Utah. In a December 22, 2015 order, Mr. Holsman's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-15 79982

HORMAN, TODD A., principal broker, North Logan, Utah. In a stipulated order dated December 16, 2015, Mr. Horman admitted to engaging in the practice of real estate from a location with signs which advertised a marketing entity without including the name of his brokerage. This conduct continued for several months after the Division notified Mr. Horman of the violation. In addition, Mr. Horman used online marketing using the name of the marketing entity without using the name of the brokerage. Mr. Horman agreed to pay a civil penalty of $2,000 and complete three hours of additional continuing education. Case number RE 14-72153

INGRAM, DEBORAH, sales agent, Syracuse, Utah. In a stipulated order dated February 17, 2016, Ms. Ingram admitted to placing multiple advertisements, misrepresenting that she was the listing agent and without identifying the listing brokerage in the advertisements in viola-

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tion of Utah law. Ms. Ingram agreed to pay a civil penalty of $500. Case number RE-14 72611

INGRAM, JERRY A., principal broker, Syracuse, Utah. In a stipulated order dated February 17 2016, Mr. Ingram admitted to placing multiple advertisements, misrepresenting that he was the listing agent and without identifying the listing brokerage in the advertisements in violation of Utah law. Mr. Ingram agreed to pay a civil penalty of $500. Case numbers RE-15-77223 and RE-15-79595

JOLLEY, MAX G., sales agent, St. George, Utah. In a stipulated order dated January 20, 2016, Mr. Jolley admitted to forgery by unlawfully duplicating resort guest passes for use by tenants and guests of condominiums that he managed, acts which are in violation of Utah law. Mr. Jolley pleaded guilty to felony theft and forgery charges in the resulting criminal proceeding. Mr. Jolley agreed to the revocation of his license and to pay a civil penalty of $5,000 which penalty will be reduced to $1,000 if Mr. Jolley pays full restitution to his victims within one year. Mr. Jolley shall appear before the Real Estate Commission prior to any future applications for licensure as a real estate sales agent in the state of Utah. Case number RE-13-66710

JONES, KAYSON, sales agent, Spanish Fork, Utah. In a December 29, 2015 order, Mr. Jones's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80035

KIRCHHOEFER, ERICH S., sales agent, Layton, Utah. In a stipulated order dated January 20, 2016, Mr. Kirchhoefer admitted to marketing residential properties online without including the name of his brokerage in the advertising in violation of Utah regulations. Mr. Kirchhoefer agreed to pay a civil penalty of $150. Case numbers RE-14-69342

KRAHENBUHL, BRIAN DANIEL, sales agent, South Jordan, Utah. In a February 4, 2016 order, Mr. Krahenbuhl's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80656

LARSEN, JUSTIN L., sales agent, Farmington, Utah. In a January 26, 2016 order, Mr. Larsen's license was granted and placed on probation due to a pending criminal charge. If Mr. Larsen is convicted of the charge he is required to notify the Division within 10 business days. Case number RE-16 80468

LONGHURST, D. BRADY, sales agent, Sandy, Utah. In a December 4, 2015 order, Mr. Longhurst's license was renewed and placed on probation for one year due to criminal history. Case number RE-15-79739

MATAELE, RAYMOND, sales agent, Taylorsville, Utah. In a January 26, 2016 order, Mr. Raymond's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80476

MERRILL, ANGELA, sales agent, Lehi, Utah. In a December 3, 2015 order, Ms. Merrill's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-79701

MILLER, ELIZABETH ESTELLE, sales agent, St. George, Utah. In a January 21, 2016 order, Ms. Miller's license was renewed and placed on probation for the renewal period due to criminal history. In addition, Ms. Miller was ordered to pay a civil penalty of $500 for failing to notify the Division within ten days of entering into a plea in abeyance on the criminal charges. Case number RE-13-68045

MITCHELL, LYNANN, sales agent, Orem, Utah. In a January 8, 2016 order, Ms. Mitchell's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80190

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MONTAGUE, KATHY, sales agent, Draper, Utah. In a December 4, 2015 order, Ms. Montague's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-15 79733

MORTENSEN, NANTAWAN, sales agent, Salt Lake City, Utah. In a stipulated order dated January 20, 2016, Ms. Mortensen admitted to listing a property for sale without the authorization of the co-owner of the property. After being informed that she did not have the co-owner's permission to list the property for sale, Ms. Mortensen continued negotiations for the sale of the property. These acts are in violation of Utah law and regulations. In mitigation, Ms. Mortensen was a relatively new agent at the time and had been informed by her client's attorney that her client was authorized to list and sell the property. Ms. Mortensen agreed to pay a civil penalty of $500 and complete three hours of additional continuing education. Case number RE-13-68579

MUELLER, JONATHAN SCOTT, sales agent, Park City, Utah. In a February 2, 2016 order, Mr. Mueller's license was granted and placed on probation for one year due to criminal history. Case number RE-16-80588

OLSEN, NICHOLAS GARY, sales agent, Bountiful, Utah. In a January 22, 2016 order, Mr. Olsen's license was renewed and placed on probation due to a pending criminal charge. Case number RE-16-80406

PAGE, TYSON CURTIS, sales agent, South Weber, Utah. In a February 9, 2016 order, Mr. Page's license was granted and placed on probation for one year due to criminal history. Case number RE-16-80719

PARKER, DAVID L., associate broker, North Salt Lake, Utah. In a stipulated order dated February 17, 2016, Mr. Parker admitted to entering into a limited agency consent agreement to act as limited agent in a sales transaction for a property owned by a limited liability company of which he was a member. These actions violate Utah regulations. The transaction did not close due to the buyer's cancellation of the REPC prior to the due diligence deadline. Mr. Parker agreed to pay a civil penalty of $500. Case number RE-14 70943

PATTERSON, MATTHEW, sales agent, Layton, Utah. In a December 4, 2015 order, Mr. Patterson's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-79736

PORTER, BRENDON BOLTON, sales agent, Salt Lake City, Utah. In an October 30, 2015 order, Mr. Porter's license was granted and placed on probation for one year due to criminal history. Case number RE-16-79279

RACHUBA, CHRISTOPHER JACK, sales agent, Woodbine, Maryland. In a February 9, 2016 order, Mr. Rachuba's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80722

ROBERTS, DOUG, sales agent, West Point, Utah. In a December 22, 2015 order, Mr. Roberts's license was renewed and placed on probation for one year due to criminal history. Case number RE-15-79986

ROBERTS, RACHEL ANN, sales agent, Ogden, Utah. In a February 29, 2016 order, Ms. Roberts's license was renewed and placed on probation for one year due to criminal history. Case number RE-16-81115

SANCHEZ, MICHAEL J., sales agent, West Valley City, Utah. In a stipulated order dated December 16, 2015, Mr. Sanchez admitted to failing to disclose a plea in abeyance to a class B misdemeanor in his application to renew his license. His failure to disclose is a misrepresentation in his application in violation of Utah law. Mr. Sanchez

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agreed to pay a civil penalty of $500 and that his license would be on probation during the renewal period. Case number RE-15-79727

SMITH, SKYLAR, sales agent, St. George, Utah. In a February 26, 2016 order, Mr. Smith's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-81076

TAEOALII, CONNIE M., sales agent, West Valley City, Utah. In a February 4, 2016 order, Ms. Taeoalii's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80673

TAYLOR, MARCI ANN, sales agent, Brigham City, Utah. In a December 3, 2015 order, Ms. Taylor's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-15-79706

TAYLOR, ZACHARY JAMES, sales agent, Holladay, Utah. In a February 17, 2016 order, Mr. Taylor's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80825

TEW, BRAD, unlicensed, Springville, Utah. In a stipulated order dated December 16, 2015, Mr. Tew admitted to acting as an unlicensed sales agent following the suspension and later expiration of his real estate license in violation of Utah law. Without an active license, Mr. Tew represented at least two individuals in the purchase of their home and provided management services for at least 14 separate properties. Mr. Tew agreed to pay a civil penalty of $37,150 and to cease and desist from all activities requiring a real estate license. Case number RE-14-71312

THORNTON, JACEE ANN, sales agent, Ogden, Utah. In a December 22, 2015 order, Ms. Thorton's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-79993

TWELVES, MIRIAM GRACE, sales agent, Hurricane, Utah. In a February 4, 2016 order, Ms. Twelves's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-80647

WALDEN, SPENCER S., principal broker, Las Vegas, Nevada. In a February 2, 2016 order, Mr. Walden's license was reinstated and placed on probation for the renewal period due to criminal history. Case number RE-16 80590

WATERS, CORY, sales agent, Richfield, Utah. In a January 22, 2016 order, Mr. Waters's license was renewed and placed on probation for the renewal period due to criminal history and failure to pay child support. Case number RE-16-80405

WINN, JOSHUA, sales agent, Orem, Utah. In a stipulated order dated February 17, 2016, Mr. Winn admitted that while under an agreement to represent both sides of a sales transaction as a limited agent, he had advised and represented the seller, and assisted the seller in settlement negotiations, in violation of the fiduciary duty he owed to the buyer in the transaction. Mr. Winn agreed to pay a civil penalty of $6,000 and complete 12 hours of additional continuing education. Case number RE-13-64200

TIMESHARE

FRANCE, CHRISTOPHER, salesperson, Salt Lake City, Utah. In a February 2, 2016 order, Mr. France's application for licensure was denied due to criminal history. Case number TS-16-80580

SHERR, STACY E., salesperson, Heber City, Utah. In a January 13, 2016 order, Ms. Sherr's application for licensure was denied due to criminal history. Case number TS-16-80256

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KAGIE'S KORNER

In this addition of the Korner, I would like to address two different topics based on types of telephone calls I consistently receive.

Advertising Call

The first call goes something like this:
Agent Jon Smith calls to file a complaint about a KSL classified advertisement his buyer, Ms. Andrews found yesterday. It is her dream home so she was really excited and wanted to know when she could view the property. Mr. Smith reviewed the MLS listing and contacted the listing agent, Ms. Jones, who informed him the property was under contract. Mr. Smith and Ms. Andrews became upset as they feel the advertisement is misleading. They want to file a complaint with the Division because the property, despite being advertised for sale, does not seem to be available for purchase.

As presented, the Division does not see this as a violation. I would like to clarify why. Even though the property is under contract with another potential buyer, Ms. Jones appears to be looking out for her client's best interest. In this case, Ms. Jones's client, after consulting with Ms. Jones, expressed a desire to keep the property advertised in case the current prospective buyer's contract fails. The client may want to also consider having a backup offer in place. A listing agent acting under such guidance can, and should, keep marketing the property. Ms. Jones would seem to be following the instructions of her client by continuing to market the property for sale.

A couple of things you should consider regarding this scenario. First, MLS requirements may have a time frame within which you need to update a listing's availability on the MLS. There is not a similar requirement under the Division statutes and rules. Second, an online advertisement is similar to a yard sign. Not all agents place an "under contract" or "sale pending" rider on yard signs, so why would other forms of advertising be required to be handled differently?

Commissions Call

The second call goes like this:

A buyer's agent has been in contact with a listing agent. To get a deal done, the agents decide there will need to be a reduction in the commissions. One of the agents calls to ask if this should be done via the Real Estate Purchase Contract (REPC). The short answer to this question is NO.

Remember, a commission agreement is a written agreement between a broker and a client. This is usually done through the listing agreement on the listing side, and through a buyer broker agreement on the buyer's side. Commissions should never be part of the REPC since the REPC is a legal contract between the seller and buyer regarding the property transfer. Agents should not insert their agreements into the REPC.

Any time an agreement to pay a commission is changed for one or both of the agents, that change should be reflected in other documents. First, an addendum to the listing, the buyer broker agreement, or both, should be made to reflect the change as agreed upon by the broker/agent and the client. Second, the change should be done via escrow instructions to notify the escrow agent of the commission split between brokerages. That way, you inform the correct parties but do not become a part of a contract that otherwise does not involve your interests.

HB72 – Summary of Changes to the Timeshare and Camp Resort Act

The Division of Real Estate worked with the American Resort Development Association on HB72. This is only a summary of the changes; please review the bill for exact language:

http://le.utah.gov/~2016/bills/hbillint/HB0072.pdf

Timeshare and Camp Resort Projects

Registration – Filing Application
57-19-5

Remove the requirement to pay an inspection fee upfront.

If the Division determines that an inspection is necessary, require the development to pay the Division the actual cost and expenses incurred by the Division in performing the on-site inspection.

Effective Date of Application
57-19-6

Allows for the Division to grant a developer who has submitted an application that has not yet been approved the ability to advertise, offer, or sell an interest for a period of 30 days or less.

Disclosure Required
57-19-11

Allow for electronic versions of documents.

Clarify that a development will not issue more interests than they can accommodate.

Purchaser's Right to Cancel
57-19-12

Clarify a purchaser's right to cancel.

Suspension, Revocation, or Denial of Registration – Fine
57-19-13

Increase maximum fine amount from $500 per violation to $5,000.

Application for Registration of Salesperson
57-19-15

Clarify that the Division can exercise discretion in approving the application of a salesperson based on honesty, integrity, truthfulness, and reputation.

Congrats on Retirement Allyn!

Allyn Stutsman retired this week from her service to the State of Utah. Allyn has served the state as an employee for 22 years and has been a fixture at the Division of Real Estate. It is difficult to quantify her contributions to the operations of the Division. Her work as Enforcement Secretary supported her co-workers in the performance of their responsibilities and she filled a vital role in the mission of the Division which is to protect the public and promote responsible business practices through education, licensure, and regulation of real estate, mortgage, and appraisal professions.

Allyn has always been a strong advocate of protecting the public. She was careful and meticulous in her work documenting actions taken against individuals who strayed from the laws and rules regulating the real estate industry. In doing so, she contributed to a positive environment for real estate transactions in the state to not only protect the public but also provide a more level playing field for the conscientious, licensed real estate professional.

We will miss seeing and working with Allyn on a daily basis, but wish her well in retirement. While we are a little sad that we will not see Allyn at the office every day, we are happy for her and happy to have been associated with her. We hope that retirement brings her fulfillment and we thank her for a job well done.

Happy trails Allyn!

CARAVAN 2016

On March 15th, all Utah Division of Real Estate licensees were sent an email invitation, for the upcoming 2016 Spring CARAVAN. 3-hour presentations will be provided at nine different locations throughout the state.

As of the publication of this newsletter, three locations are filled, and are no longer available for reservations. In the remaining six sites: Vernal, Logan, Moab, Richfield, Cedar City, and St. George, there is still limited seating available. For additional information or to register, please go to the Division website at:

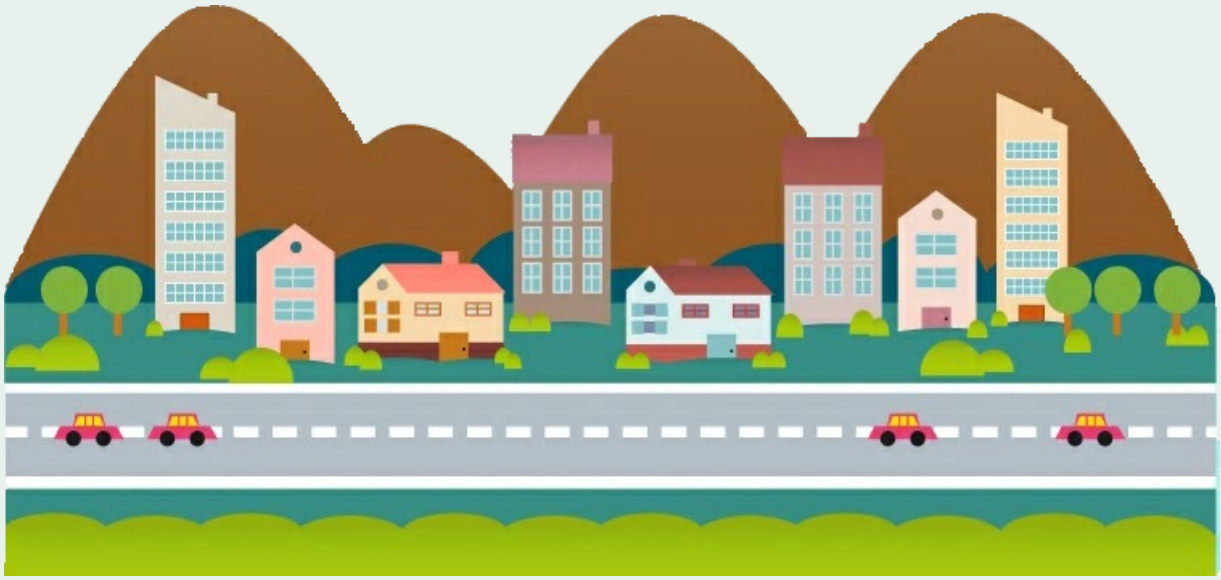
http://realestate.utah.gov/caravan.html.

Please keep in mind that the Division's annual Spring CARAVAN was originally created, and is currently designed to reach out and provide services to real estate, mortgage, and appraiser licensees in the underserved areas throughout the state.

NOTE: If you have reserved seating at this year's CARAVAN and you find that you have a conflict, please contact the Division Real Estate Education Coordinator, Jennica Gruver At 801-530-6751 or jgruver@utah.gov to cancel your reservation so that other interested parties may attend.

See the following page for more information about CARAVAN locations.

CARAVAN 2016



The Division of Real Estate is offering a FREE 3 hour CORE continuing education course for real estate, appraiser, and *mortgage licensees. (*Mortgage licensees will receive 2 hours of credit to fulfill their state specific CE requirement).

Jonathan Stewart, Director of the Division of Real Estate, Mark Fagergren, Director of Licensing and Education, and Jeff Nielsen, Chief Investigator, will be discussing current issues and hot topics facing the real estate, mortgage, and appraisal industries. They will also be available to answer any questions or concerns you may have as a licensee.

There continues to be no charge to attend the Division CARAVAN. However, if you can not attend please be courteous and cancel your registration at least three business days prior to your scheduled event.

VERNAL
April 19, 2016
9:00am - Noon
Springhill Suites Marriott
1205 W Highway 40

PARK CITY
April 21, 2016
9:00am - Noon
Park City Marriott
1895 Sidewinder Dr.

LOGAN
April 26, 2016
1:00pm - 4:00pm
Bridgerland Applied
Technology Center
1301 N 600 W

LAYTON
May 3, 2016
9:00am - Noon
Davis Convention College
1651 N 700 W

PROVO
May 5, 2016
9:00am - Noon
Utah Valley Convention Center
220 W Center St.

MOAB
May 10, 2016
9:00am - Noon
Grand Center
182 N 500 W

RICHFIELD
May 11, 2016
9:00am - Noon
Sevier County Admin. Building
250 N Main St.

CEDAR CITY
May 12, 2016
9:00am - Noon
Springhill Suites Marriott
1477 S Old Hwy 91

ST GEORGE
May 13, 2016
9:00am - Noon
Dixie State University,
Browning Learning Center
Dunford Auditorium
225 S 700 E

Reserve Your Seat Early
Seating is Limited
Stand-by Seating is NOT Guaranteed

PLEASE COMPLETE THE ONLINE REGISTRATION BY LOGGING ONTO:

www.realestate.utah.gov/caravan.html

Questions??.....

.....Comments??

Contact Us!