Utah Department of Commerce

Division of Real Estate NEWS

A publication for Utah's real estate, appraisal, and mortgage professionals.

Gary R. Herbert, Governor Francine A. Giani, Executive Director Deanna Sabey, Division Director

THIRD QUARTER 2010

Beginning January 1, 2011

Paper Change Cards & License Renewal Forms Will NOT BE ACCEPTED

Three years ago, in September of 2007, the Division notified real estate brokers, branch managers, and principal lending managers of the introduction of an innovative on-line real estate license management system (RELMS). Two months later, the Division provided details of this time saving system to licensees through the Division of Real Estate Newsletter. With the transition to the Nationwide Mortgage Licensing System (NMLS) in May of this year, mortgage licensees no longer perform status changes and license renewals on RELMS.

Real estate and appraiser licensees are now able to use RELMS to accomplish the following:

- Update their mailing and physical addresses
- Change their license status from active to inactive, etc.
- Change their company affiliation (which requires on-line approval/ acknowledgement from the affected principal broker(s))
- Manage their company roster (for brokers)
- Order a duplicate license
- Easily view completed continuing education courses at any point in time during the two years of an individual's license
- View and order a license history
- Complete and submit an application for license renewal

Our licensees have now had three years to acquaint themselves with the uses and convenience of RELMS. **Beginning January 1, 2011, real estate and appraiser licensees (excluding appraiser trainees) desiring to make the changes listed above will exclusively perform them on the on-line RELMS system**.

The Division will no longer accept change cards or license renewal forms (with very limited exceptions) **at the Division**. Only individuals who are REQUIRED BY THE DIVISION to provide additional information due to disclosure questions, or who may have a restriction placed on their licenses, will be required to submit paper forms for processing.

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From the Director's Desk

Deanna Sabey

If you've been listening to the news media for the last couple of years, you may have heard a prevalent theme: new legislation that will make the lives of Americans better. Examples are the Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act as part of the Housing and Economic Recovery Act, the Patient Protection and Affordable Care Act, Education Affordability Reconciliation Act, American Recovery and Reinvestment Act, Credit Card Act, and the recently enacted Wall Street Reform and Consumer Protection Act ("Wall Street Reform Act").

Regardless of your political views on the sweeping legislation that continues to churn out of Washington D.C., the Wall Street Reform Act will likely impact you in some way. It will impact the Division.

The Act is a 2300-page document. It creates a new government agency, the Consumer Financial Protection Bureau ("CFPB"). The CFPB will be the sole regulator charged with enforcing consumer laws (such as the Fair Credit Reporting Act, Home Owners Equity Protection Act, Fair Debt Collection Practices Act, Home Mortgage Disclosure Act, Equal Credit Opportunity Act, Home Owners Equity Protection Act, RESPA, SAFE and TILA). It has rulemaking authority for all of the laws under its umbrella. The CFPB also has specific powers including the ability to regulate consumer disclosures, and it is required to create a combined TILA/RESPA disclosure within a year.

Mortgage Originators: The Wall Street Reform Act disallows compensation based on the terms of the loan (except the principal amount) and prohibits originators from receiving origination fees from both the borrower and the lender. Originators are subject to significant penalties (liability not to exceed the greater of actual damages or 3 times the originator's direct and indirect compensation, plus attorneys' fees and costs) for violation of compensation provisions. The Act requires an underwriter to determine whether the borrower has a reasonable ability to repay the loan after taking into account a list of factors (including credit history, current and expected future income, current debts, DTI, employment status, and other financial resources). Mortgage originators might have a greater burden interfacing with processors, underwriters, and borrowers to satisfy the new underwriting standards. There are also new disclosure requirements, anti-steering provisions, new restrictions on high cost mortgages, and prohibitions against pre-payment penalties or single premium credit insurance for certain loans.

Real Estate Agents/Brokers: The Act defines a BPO and prohibits BPOs from being used to determine the value of property in the origination of a residential mortgage loan.

Appraisers: The HVCC will sunset when the Federal Reserve Board issues interim regulations on appraiser independence. The FRB has only 90 days from the law's enactment date of July 21st to issue the new rules. Hopefully, the FRB will be mindful of the damage caused by the HVCC and craft rules that do not perpetuate problems. The Act provides the CFPB with enforcement authority to pursue and levy substantial penalties against any person seeking to coerce or influence an appraiser or threatening to withhold payment for an appraisal. If the appraiser has a conflict of interest in valuing the property (appraiser ownership or other direct or indirect interest), the appraiser is prohibited from providing appraisal services on that property.

Appraisal Management Companies: Many of the AMC-related provisions found in the Act are already part of Utah's AMC statute. However, Utah does not regulate how much money an AMC must pay an appraiser for appraisal services. Under the Act, AMCs must pay appraisers "customary and reasonable fees." This phrase means the AMC must pay what the appraiser would typically be paid for the assignment without AMC involvement

given the market area of the property being appraised. AMCs will still be required to register with the Division under state law, but the Division's regulation of AMCs will be overseen by the Appraisal Subcommittee.

The Division often hears rumors of appraisers who are violating laws and rules, but the parties who have credible information fail to report to the Division on those appraisers. The Act requires mortgage licensees, real estate agents and brokers, and AMCs to report to the Division any information about an appraiser who is likely violating an appraiser law or rule.

This article covers a few of the many changes in the Wall Street Reform Act that Utah appraisers, AMCs, and mortgage and real estate licensees will eventually see. Professional associations, through their web-sites, provide more detailed information on the Act and timing of industry compliance.

It will take a while for regulatory responsibility and authority to be transferred to the CFPB and for new rules to be promulgated and implemented. And time will tell if the Act really makes the lives of Americans better.

The Wall Street Reform Act defines a BPO as "an estimate . . . that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales . . ."

Appraiser Education Banking

Appraiser education providers have been banking appraiser continuing education (CE) credit hours since March of 2009. By next March, all appraiser CE credits will be posted to individual appraiser RELMS CE credit accounts. Accordingly, at appraiser license renewal, the ability to "add" CE course credits taken prior to March 2010 will be eliminated.

Recently the ability for appraiser pre-license course providers to "bank" approved pre-license (PE) course credit hours has been made functional. Going forward, both appraiser CE and PE will be banked into appraiser RELMS CE course credit accounts.

For appraisers only, the Division education search engine can search for both CE and PE courses. To explore available appraiser course information, go to: http://www.realestate.utah.gov/education.html

Instructor Development Workshop

October 18th & 19th, 2010

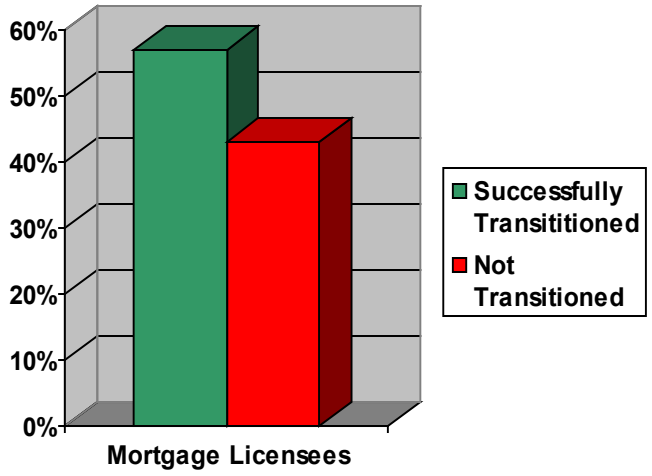
Park City Marriott

This year's two day workshop will feature two local faces, Joseph E. Wrona and David W. Johnson. Mr. Wrona of Wrona Law Firm has had extensive experience involving civil litigation, criminal defense, Utah real estate, contracts, and development and construction matters. David W. Johnson is a former Division Director and prominent Utah real estate attorney, broker, and author of many of the forms in use by industry members today. He acts as legal counsel to the UAR and Park City Board of Realtors and has been an educator of real estate principles for over 25 years

The registration fee for the two day IDW is $75, or $50 if you wish to attend only one day (light breakfast and lunch are included). The registration deadline is October 1st, 2010. A $20 late fee will be applied to all registrations received after October 1st, 2010. To reserve your seat, please mail your registration form found on www.realestate.utah.gov.

Mortgage Licensees Whose Records Were Successfully Transitioned Onto The NMLS (57% of Current Mortgage Licensees)

-WHAT'S NEXT?-



1) **LICENSE RENEWAL PERIOD. Between November 1 and December 31, 2010, transitioned licensees and new (2010) licensees need to renew their licenses.** Licensees will need to request their renewal through NMLS. The NMLS will be sending license renewal notices to inform transitioned and new (2010) mortgage licensees regarding the renewal requirements and procedures. Go to: (http://mortgage.nationwidelicensingsystem.org/slr/common/renewals/Pages/RenewalSteps.aspx).

2) **REQUIREMENTS THAT MUST BE COMPLETED**. The requirements that MUST BE COMPLETED by licensees **BEFORE license renewal** are:

a) **Complete all address and status changes in the NMLS system BEFORE license renewal is initiated.** During the license renewal procedure, the accuracy of existing NMLS record information will be confirmed and attested to by mortgage licensees. **NO addresses or status changes will be accepted during the license renewal period.**

b) **Complete an NMLS 20-hour pre-license course.**

Exception: A licensee who licensed after January 1, 2010, or who successfully completed education certification with the NMLS is NOT required to complete pre-license education.

c) **Complete BOTH NMLS national AND Utah state exams.**

Exception: If Utah state exam certification was successfully completed by the licensee with the NMLS, then licensee will ONLY need to take and pass the NMLS national exam.

PLEASE NOTE: Testing centers are experiencing scheduling delays due to high demand.

Schedule your exam(s) NOW!

60% (3,000+) Utah transitioned licensees have NOT passed the NMLS national exam!

Those who schedule later in the year MIGHT NOT BE ABLE TO TAKE THE EXAM IN 2010. Not completing items 2 (a-d) will prevent an individual from renewing his or her loan originator license. Thus, his or her license(s) will expire at the end of 2010.

d) **Complete 14-hours of continuing education (either NMLS or Utah DRE approved).** The continuing education package of courses is required to include 2 hours of ethics and 3 hours of federal/state laws governing mortgage lending.

Utah DRE CE hours will only be shown in your RELMS account, not in your NMLS account.

Exception: If initially licensed AFTER 10/1/09, then licensees are ONLY required to complete 8 hours of NMLS OR Utah DRE approved continuing education.

e) Authorize the NMLS to pull your **credit report** (ideally at the time of license renewal **but no later than March 2011**).

3) **RENEW EARLY IN RENEWAL PERIOD**. The renewal procedure is "first come, first served". Due to last minute surge of potentially thousands of mortgage licensees, those who renew with the NMLS AFTER 12/15/10 should expect a delay of UP TO THREE WEEKS for DRE staff to process renewals. Licensees will be unable to practice mortgage origination until their renewal application is approved and processed by the Division.

4) **LICENSE EXPIRATION ON 12/31/10**. Those licensees who fail to renew their MLO, PLM, ALM, or BLM licenses by 12/31/10 MUST CEASE TO PERFORM ANY & ALL LOAN ORIGINATION UNTIL THEIR LICENSES ARE REINSTATED OR THEY SUCCESSFULLY ARE RE-LICENSED AS NEW APPLICANTS.

5) **LICENSE REINSTATEMENT PERIOD**. **Between January 1, 2011 and February 28, 2011, licensees** who failed to renew by the end of 2010**, will need to reinstate their mortgage licenses by February 28, 2011.**

According to currently proposed NMLS licensing policies, after February 28, 2011, any licensee who fails to renew or reinstate his or her license, but who wishes to continue to work in the mortgage loan origination industry, will be required to reapply by retaking the 40-hour Utah prelicensing education; satisfying any uncompleted CE requirements since the last year in which the licensee held a license; retaking the Utah licensing exam; and, in most cases, also retaking the national licensing exam.

Note that, once a licensee has successfully satisfied the initial SAFE mandated pre-license (PE) requirement (the 20-hr NMLS approved MLO course), the licensee is considered "SAFE Compliant" and shall NOT be required to complete the 20-hr NMLS PE again. Similarly, once a licensee has successfully satisfied the initial SAFE mandated testing requirements (successfully passing the NMLS National and NMLS Utah State Test Components) and remained continually licensed (under the SAFE Act) for five years, the licensee is considered "SAFE Compliant" and shall NOT be required to take the SAFE MLO test again. However, if a licensee allows the license to expire during the five-year period following the date on which the licensee passed the SAFE MLO test, that licensee will have to retake the test in order to re-license.

Summer makes me drowsy.
Autumn makes me sing.
Winter's pretty lousy,
but I look forward to spring.

What to Expect in an Informal Hearing?

Have you ever requested a hearing on a licensing issue? You might have, and not even known it. Any time you apply for a new or renewed license with the Utah Division of Real Estate, certain key questions are asked of you on the application form. These questions are crucial to whether you will be granted the license. Answering "yes" to certain questions about whether you have a criminal history to report, or disciplinary issues in another state, will almost always trigger a hearing date being set for your application to be considered by the Real Estate Commission, Mortgage Commission, or Appraiser Board (depending on your profession). What should you expect if you receive a notice from the Division that you are instructed to appear for an informal hearing on your application for a new or renewed license?

If you're really smart, the first thing you'll do is review the applicable administrative rules governing informal hearings. Go online and check out the links to both the Division and the Department of Commerce rules at http://www.rules.utah.gov/publicat/code.htm#Commerce. It's not quite as fun as reading the fine print on a REPC, but doing so will definitely give you some peace of mind and equip you with knowledge that will help you to present yourself well.

Depending on the issue, you may be set for a hearing as short as ½ hour or as long as a full day. Come early to deal with any parking issues since the street parking is metered near the Heber Wells building. Make sure to arrive on time for the hearing or your case may be dismissed – and that type of delay might mean that you will have to start from scratch again and retake your education and your test(s). Bring a book or other work with you in case you have to wait outside in the hallway for a time. Sometimes cases will go over their scheduled time, although this is kept to a minimum if possible.

When your case is called in, expect to see approximately five Commissioners or Board members who act in concurrence with the Division Director as the "judge" of your case. You will also see several Division staff members. Even though the hearing is informal, the Division will be represented by an attorney. Therefore, you are more than welcome to be represented by counsel as well. And despite any other information I could convey to you as the attorney for the Division, the number one piece of common-sense advice I could tell you, after seeing hundreds of informal hearings, is to BE POLITE. (This is especially true for your attorney). Don't be a jerk! Being polite goes a long way in gaining respect from the judge panel. And whatever you do, don't condescend to them as if this whole thing is a waste of your time, and don't assume the attitude that you know more about the subject than they do. One of my favorite memories from an Appraisal Board hearing was when an appraiser trainee came in one day and stated, "I don't know if you guys know how an appraisal is done, but the way you verify this information is by doing a paired sales analysis." The poor guy had no idea he was talking to a Board with over 100 years of combined actual appraiser experience, some of them USPAP instructors on the side. So it's safe to assume that when you appear before one of the Commissions or the Board, the panel of judges knows significantly more about your profession than you do. So just be polite, and don't act like a know-it-all. Be open to the questions they ask you. Be honest.

Bring extra copies of any documents you want to use as evidence. Some applicants for new or renewed licenses bring a broker, supervisor, or professional reference with them, and a reputable source claiming to trust and believe in you can make a big difference in your case. Remember that you have the burden of proof in an application hearing. You must show that you are honest, competent, and not plagued with a disreputable past. (It's even harder if you're an appraiser, where you can expect to get quizzed on why you completed a sample appraisal report the way you did.) Again, read the administrative rules before you

come so you know what things the Commission or Board can consider about you. If you have judgments, tax liens, or child support arrearages against you, bring proof of payment with you, or evidence that you've set up a payment plan and are honoring it. If you have entered into a plea in abeyance, bring in everything that shows you completed all of the terms of that agreement. Show the judges' panel that you have what it takes to not only be successful, but to be trustworthy.

There are other reasons why you might have a hearing with the Division of Real Estate. There are disciplinary cases where the Division brings charges against a licensee, or an applicant might file an appeal from a hearing officer's order. The procedures for those types of hearings are slightly different from the procedures outlined above, although being honest and polite in those circumstances is always going to be helpful as well. Hopefully, these suggestions as to what you can expect as a new or renewal applicant at an informal hearing will be helpful. Good luck!

What is the New Agent course & who needs to take it?

All new Real Estate Agents (licensed July 1, 2007 - present) are required to take the 12 Hour New Agent Course in order to renew their license. This course is also qualified as a Core Course and could be used to towards CE requirements.

Staff Spotlight

Jan Buchi
Morgage Education Coordinator

Jan came to the Division in July 2009 and has brought with her a keen insight and calm demeanor. Since, coming to the DRE Jan has worked mainly on the new SAFE ACT/ NMLS mortgage and licensing changes. She has been the "voice of reason" during the new mortgage transition. NMLS has been a steady stream of overwhelming obstacles and challenges for our staff and the mortgage industry. But, during all of these obstacles Jan has been able to not only remain calm but to give fresh ideas and put things in perspective. Helping people overcome the challenges of transition is one of Jan's most rewarding experiences.

Jan says she has enjoyed working at the Division for the past year because of the people she works with. She says they are professional and fun to work with. Jan is originally from Utah but lived in Jacksonville Florida for about 20 years. While in Florida Jan worked as an appraiser and also worked for an organization setting up continuing education for professional licensees. In 2000, Jan moved back to Utah and worked for an Environmental Engineering Firm as the office manager.

The best advice Jan could give to a mortgage licensee who is transferring over to the NMLS System is to be conscientious about their license and treat it with the importance that it was meant to be treated. Read the information that the Division sends out. Be proactive in staying on top of the rules and statutes. Be proud to have your mortgage license because it cost a lot of time and money to get it. Provide the necessary effort to maintain your license.

Now that the transition period with NMLS is over Jan is looking forward to the streamline license renewal process for licensees.

When not working, Jan enjoys visiting the many beautiful cites of Utah. Playing with her grandchildren, and spending time with family.

Second Quarter 2010

Licensing Actions & Disciplinary Sanctions

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.

Kagie's Korner

WHAT, my license has expired? The Division doesn't have my license associated with my current brokerage?

The Division staff have multiple conversations each month with licensees who are confused about these two issues. These issues are the responsibility of the individual licensee first and foremost, while a principal broker has a supervisory responsibility to make sure that licensees affiliated with the company are active and properly associated with the principal broker's license in the Division records.

Many times an agent or broker will make a change with a local board or a multiple listing service and then assume that all is well and done, forgetting that the change must also be recorded with the division. It is common for Division staff to hear a licensee explain, "I thought that the Board, the MLS, and the Division were all one in the same." This is not true, and it is a dangerous misconception because agents who forget to pay attention to their license expiration date, or who forget to submit a change form when they change companies, may be disciplined for engaging in unlicensed or unauthorized activity.

The following two examples that might help clarify these situations.

Agent Mr. Busy wants to transfer from ABC Real Estate to XYZ Realty, so he goes to the respective brokers and has a change card signed by all parties. The change is then completed right? WRONG! What if Mr. Busy thinks the old broker is going to send the change card to the Division, the old broker thinks the new broker will submit it, and the new broker thinks the agent is taking care of it? In fact no one sends in the change, and none of the three follows up with the Division to make sure the change is recorded. Mr. Busy runs on down to the board and the MLS and makes the change with them. Months go by. The agent is actively pursuing his career listing properties, closing sales, and being paid commissions through the new broker.

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REQUIRED – Appraiser Trainee Registration Renewal Deadline

In September of 2004, the Division began registering appraiser trainees to work under one or more supervisors in order to acquire practical appraisal experience and to subsequently become licensed and/or certified.

Since that time, many trainees have accumulated the required experience and become appraisers. Some have needed several years to complete the required experience hours and education to become appraisers, and it appears that the difficult economic times we are currently facing might be causing some trainees further delay in their efforts to become licensed. In fact, a few individuals registered as trainees back in 2004 or 2005 (over five years ago) have yet to apply for licensure.

These individuals are subject to legislation passed in 2010 that directed the Division to prepare rules regarding the re-registration of appraiser trainees. Those rules were promulgated in 2009 (see Utah Administrative Code § R162-110), and the deadlines that were established for re-registration will soon be upon us.

There are currently 579 appraiser trainees registered with the Division. 492 of them (identified below as Group A) are required to re-register by December 31, 2010. Those identified below as Group B are the 32 trainees that will need to renew on the anniversary of their original registration date in 2011. Finally, those identified as Group C are the 55 trainees who will need to renew on the two-year anniversary date of their original registration.

Appraiser Trainee Group	Original Registration Date	Re-Registration Date
A	2004 – 2007	Prior to January 1, 2011
B	2008	In 2011 - Prior to the anniversary date of the trainee's original registration
C	2009 – 2010	Prior to the two-year anniversary date of the original registration

For convenience, a list of all appraiser trainees and their renewal deadlines can be found at:
http://www.realestate.utah.gov/ABCTRAINEERENEWAL.pdf

In order to re-register, a trainee shall submit **all of the following** to the Division:

1) A completed Appraiser Trainee Registration Renewal Form (http://www.realestate.utah.gov/apr_trainee_renewal_reg.pdf).

2) Two fingerprint cards (FBI Fingerprint card # FD – 258, available at the Division office or many police stations) **OR** evidence that the applicant's fingerprints have been electronically scanned at a Division authorized testing center.

3) All court documents related to any past criminal proceeding(s).

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Appraiser Segmented Applicants

-Deadline Approaches-

FINAL NOTIFICATION

During 2007 many appraiser trainees, licensed appraisers, and certified residential appraisers submitted what is referred to as a "segmented application" in order to fulfill the educational requirements to obtain a higher level appraisal license. By submitting a segmented application, appraiser candidates were able to meet the educational requirement for the higher qualification appraiser license, while being granted additional time to meet the necessary experience and examination requirements.

The deadline to complete the experience and examination requirements under a segmented application is January 1, 2011 (three years after the deadline for submitting the required education). Nearly three years have gone by quickly and the deadline is rapidly approaching. Appraisal candidates who have submitted segmented applications **need to complete all remaining licensing requirements and receive the advanced level appraisal license by the January 1st deadline, or the segmented application will no longer be valid.**

The requirements that need to be completed before the deadline are:

1. Complete the required experience hours.
2. Submit an appraiser experience log application. The form can be found at: (http://realestate.utah.gov/appraisal/appr_experience_log_20100316.pdf)

Once you complete your experience and submit your experience log(s), the information will be reviewed and a determination made by the Appraiser Licensing and Qualification Board as to whether your experience qualifies you to sit for the appraisal exam for which you have applied.

This process typically takes two months and might take up to four months if the board is inundated with a large number of experience applications submitted simultaneously.

3. Submit proof of having successfully passed, within the 90-day period preceding the date of application, the appraisal exam for which you have applied.
4. Submit the $50 national registry fee.

Please focus your efforts to complete the segmented licensing process and, ultimately, to receive the advanced appraiser license BEFORE the January 1, 2011 deadline.

Remember you need to complete the entire licensing process (including receiving your license/certification) before the deadline. Testing centers are currently experiencing delays in scheduling exams!

If you are unsuccessful in meeting this segmentation deadline, you will need to re-apply to receive the license **you** are seeking. To reapply, you will have to fulfill the appraisal qualifications requirements that are currently in effect, including the increased educational requirements.

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-REQUIRED-
Appraiser Trainee Registration
Renewal Deadline

4) Complete documentation of any sanction taken against the trainee in any jurisdiction.

5) A signed letter of waiver authorizing the Division to obtain the fingerprints of the applicant, review past and present employment records, review education records, and conduct a criminal background check (see page 3 of Appraiser Trainee Registration Renewal Form at: http://www.realestate.utah.gov/apr_trainee_renewal_reg.pdf.

6) The fee for the criminal background check ($40).

7) The fee for the Appraiser Trainee Registration Renewal ($100).

8) Evidence of having completed 28 hours of approved continuing education taken during the preceding two years (including the 7-hour National USPAP Update Course), OR 28 hours of AQB qualifying education taken during the preceding two years (including the 7-hour National USPAP Update Course).

During the first week in November, notifications will be sent to those registered trainees who are required to renew before January 1, 2011. After the trainee re-registration process is completed, trainees will renew their registrations every two years. Renewal will NOT require fingerprinting.

Appraiser trainees who fail to re-register by the deadline schedule outlined above will NOT be allowed to count experience hours toward licensure or certification for work performed after the trainee registration expires.

After an appraiser trainee registration expires, late fees, reinstatement fees, and 24 additional hours of continuing education will be required. Twelve months after an appraiser trainee's registration expires, he or she must reapply with the Division as a new trainee applicant in order to continue working toward licensure/certification.

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Beginning January 1, 2011 Paper Change Cards & License Renewal Forms will NOT BE ACCEPTED

Faxing, mailing, e-mailing, or hand delivery of renewal forms or change cards will no longer be accepted for processing by the Division (other than from those individuals who have been PREVENTED BY THE DIVISION from completing their license renewal or making changes on RELMS).

By requiring electronic changes and license renewal, the Division can focus its efforts on utilizing its resources in a more meaningful and cost effective manner.

The Division continually works to ensure that the on-line RELMS system functions in a smooth and efficient manner. We appreciate your acceptance and use of RELMS in performing these essential licensing functions.

Licensees will need to allow adequate time for continuing education to be banked by providers before they attempt to renew their licenses on RELMS. Licensees need to comply with Administrative Rule R162.3.6.2.1 in order to prevent a late license renewal. This rule states:

"...To renew a license on active status...an applicant must submit to the Division proof of having completed, during the previous license period **and by the 15th day of the month of expiration**, 18 hours of continuing education from courses certified by the Division."

Since CE providers are allowed ten days under Division rules to bank CE course attendance, **licensees taking courses during the last two weeks of the month will many times not have adequate continuing education banked when they attempt to renew their licenses on RELMS**. In order to prevent paying a license renewal late fee, licensees will need to complete their continuing education early enough so as to allow adequate time for providers to bank the completed courses. **Under Division rule, licensees are to complete renewal CE by the 15th of the month in which they will be renewing their licenses**.

Courses taken *after* the 15th of the month will likely not be placed into the licensee's CE "bank account" by the time the licensee applies for renewal. Only "banked" CE courses will be allowed for use at the time of license renewal.

Significant time and resource savings to both the Division and all licensees are associated with the on-line use of the RELMS system. The ability of the Division to adequately address licensee questions, concerns, and overall customer support have been greatly strengthened due to the savings attributed to on-line RELMS. Multiple paper submissions of change cards or impediment license renewal forms in partially illegible handwriting will soon become things of the past.

Approximately 75% of all licensees currently renew their licenses each month on-line through RELMS. Increasing the on-line licensing system utilization will minimize costs and allow for the greatest level of customer support possible.

Thank you for your cooperation!

Electronic Newsletter!

Are you reading your newsletter online? The Division of Real Estate would like to thank you for creating a RELMS account!

If you know people who have not recieved this newsletter please advise them to log on to www.realestate.utah.gov and create their very own Real Estate Licensing Management System Account! With so much information available why would you not want to create a RELMS account?

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Kagie's Korner

When the Division becomes aware of the issue, an investigative case is opened on both the agent and the broker at XYZ Realty for multiple statue and rule violations, and both then face enforcement actions on their licenses.

The Broker at IDREAM REALTY does not keep track of his agents, and Mr. Forgetful, one of his agents, lets his license expire on January 31st. The broker does not check his roster against the Division's and allows Mr. Forgetful to continue to practice real estate as an unlicensed individual. Mr. Forgetful practices real estate for eight months, and in September this unlicensed activity comes to the Division's attention and an investigative case is opened. The agent is charged with unlicensed activity, and the broker is charged with failing to supervise. Both face fines of up to $5,000 per violation and might also have their licenses restricted or even revoked.

How can brokers and licensees protect themselves from having disciplinary cases like these brought against them by the Division? **Check your license status and brokerage affiliation on the Division's RELMS website. Brokers--check your licensee roster against the Division's RELMS website on at least a monthly basis. Check for upcoming expiration dates and for any errors that need to be corrected on your roster. Also, whenever an agent transfers to or from your brokerage, check RELMS to verify that the transfer is on record with the Division.**

Do not make the mistake of thinking that someone else will make sure your license is active and correctly affiliated. It is your license, and it is your responsibility to maintain it.

FORECLOSURE RESCUE SCAMS

Unfortunately, foreclosures have been on the rise all across the nation, and our state is no exception. Notices of default are the leading indicators for the foreclosure process, and Utah has been, until just recently, among the leaders in the number of notices of default recorded by percentage of population. The process of foreclosure is a most traumatic time for any homeowner who is losing a home. Because a foreclosure results in the lender taking back a property and then reselling it to a third party, this is not a sale where there is a willing seller and a willing buyer; sometimes it is called a forced sale. Any time that there is high number of forced sale transactions, there will be some unscrupulous individuals and companies stepping in to take advantage of the situation. These individuals and companies call themselves by titles such as foreclosure rescue experts, foreclosure consultants, foreclosure services, and foreclosure rescue agencies.

These companies and individuals solicit homeowners who are facing foreclosure or fear they are facing foreclosure. The advertisements promise to stop the foreclosure process, or guarantee that the homeowner will be able to avoid foreclosure. Sometimes the scam operators request that the homeowner vacate the property or quitclaim the interest in the property to the scam operators. Another method used to take advantage of the homeowner, is for the scam operators to promise to pay off the loan while allowing the homeowner to stay in the home and buy it back under a lease option. The scam operators take the option money and collect rent from the homeowner, but never pay off the loan. Ultimately, the homeowner loses not only the property, but also the fees and rents paid to the scam operators.

There are also scam operators who present what looks like a legal way for the homeowner to reverse or disavow the mortgage obligation completely. They convince the homeowner that putting the property into a land trust will cut off the lender's legal right to foreclose the mortgage. They complicate the title of the property by recording additional deeds against the property.

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FORECLOSURE RESCUE SCAMS

They always collect a large fee up front, and after they have created havoc with the title to the property, they disappear into the woodwork with the homeowner's money. The homeowner is then left with a terrible title mess to be cleaned up, and the property ultimately is sold through foreclosure anyway.

These scam operators use a wide variety of methods to reach the homeowners before they have an opportunity to talk with a real estate licensee. They buy a list of the notices of default from the local governing body and use those lists to contact the homeowners. They use telephone calls and direct mail, they advertise on the internet and in local news media, and frequently they simply show up at the home and knock on the door. It is bad enough that the scam operators are taking advantage of the public, but they are doing it at a time when life is looking very bleak for someone who is financially down. They count on the fact that the homeowner is already desperate and extremely vulnerable.

The homeowner should never completely rely on these "experts" to advise them through the foreclosure process. The homeowner should contact his or her lender directly and stay in contact with the lender after the notice of default is filed. The scam operators assure the homeowner that they will stay in communication with the lender, and they advise the homeowner not to contact the lender because, "It will complicate the process." The scam operators do not want the homeowner to know what is really happening in the foreclosure process. As long as the scam operators can keep everyone else in the dark, they have a better chance of succeeding with the scam.

Real estate licensees are the experts when it comes to real property sales issues. Real estate licensees have the duty and responsibility to protect their clients, customers, and the public. Therefore, you as a real estate licensee are the best person to be assisting homeowners in the foreclosure process. If you are going to represent one or more of the parties in these transactions, you must have an agency representation agreement with the principal(s) you represent. And, of course, you must adhere to the statute and rules of the Division of Real Estate.

Real estate licensees should be prepared to help homeowners cope with the problems of a foreclosure. You might not be able to solve all of the problems that your clients face, but you can assist your clients by explaining the process. It is also possible that you can offer them some alternatives. A lender that is offered a viable alternative might cooperate to allow the home to be sold on a short sale or to accept a deed in lieu of foreclosure. Either option could possibly help the client to avoid taking a hit on his or her credit score.

There are some very valid services to help the homeowner in the foreclosure process. Not all advertised services are scams; some will honestly assist the homeowner in solving the issues that caused the lender to file the notice of default. These valid services will welcome the involvement of a real estate licensee in the process. The scam operators, on the other hand, will not want a real estate licensee involved because the licensee will point out to the homeowner the potential downfalls of the scheme.

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REMINDER

BEGINNING JANUARY 1, 2011 PAPER CHANGE CARDS & LICENSE RENEWAL FORMS WILL NOT BE ACCEPTED!

Mortgage Licensees Whose Records Were *NOT* Successfully Transitioned Onto the NMLS (43% of Current Mortgage Licensees) *-WHAT'S NEXT?-*

1) **Non-transitioned mortgage licensees will NOT BE ALLOWED TO RENEW THEIR EXISTING UTAH MORTGAGE LICENSES. Existing licenses will expire on 12/31/10. Non-transitioned licensees will need to apply for a new mortgage license through the NMLS**.

The Division recommends completion of licensing requirements (see item 2 below) and subsequent submission of NEW application as early as possible. Allow two to three weeks from the time you submit your COMPLETED application, in order to ensure adequate time for DRE staff to evaluate and process NEW applications BEFORE existing mortgage licenses expire on 12/31/10.

Mortgage licensees will be unable to practice mortgage origination between the time that their existing mortgage license expires and their new application is processed, approved, and the new license issued.

2) Requirements to apply for a **new mortgage license:**

a) Successfully complete an **NMLS 20-hour pre-license course**, AND Successfully complete a **Utah DRE 40-hour MLO pre-license course**.

Exception: Once a licensee has successfully satisfied the initial SAFE mandated pre-license (PE) requirement (the 20-hour NMLS approved MLO course), the licensee is considered "SAFE Compliant" and shall NOT be required to complete the 20-hour NMLS PE again. The licensee WILL be required to complete the Utah DRE MLO 40-hour course

b) Take and pass an **NMLS national exam,** AND Take and pass a **NMLS Utah state exam.**

c) Submit NEW **fingerprints through the NMLS** and **authorize a criminal background check** as part of your NEW licensing application.

d) Authorize the NMLS to pull your **credit report**.

3) Licensing procedure is "first come…first served". Due to anticipated last minute surge of potentially thousands of licensees, those who submit a NEW application with the NMLS AFTER 12/15/10 should expect a delay of UP TO THREE WEEKS for DRE staff to process these applications.

Services Avaliable Online

1) Look Up A License
2) NMLS Resource Center
3) Continuing Education Course Search
4) Online Renewal
5) Change Address

RULES

APPRAISAL

On September 1, 2010, amendments to rules R162-102 and R162-110 were published for comment in the Utah State Bulletin. These amendments are proposed to require applicants for trainee registration and appraiser licensure to inform the Division at the time of application if they are affiliated with another appraiser, an appraisal entity, or a government agency. In addition, these amendments would require individuals to submit a change form to the division whenever they change an affiliation. A definition for the term "affiliation" is proposed as an amendment to Rule R162-101. Public comments will be accepted through October 1, 2010.

APPRAISAL MANAGEMENT

On September 1, 2010, rule R162-2e was published for comment in the Utah State Bulletin. This rule incorporates the substantive provisions of existing rule R162-150, but reorganizes the provisions into a format that reflects the organization of the AMC statute. In addition, new provisions are proposed as follows:

- An AMC must register in the name of the legal entity under which it conducts business and inform the Division of any dbas or trade names being used. But an AMC is not required to register each dba or trade name separately.
- An AMC must have a system in place to verify that each appraiser added to the panel is licensed or certified and that any appraiser contracted to provide an appraisal service remains licensed or certified in good standing. The proposed rule does not mandate how this system must operate.
- An AMC must have a system in place to verify that an assignment is completed by the appraiser or appraisal entity to which it is assigned.
- An AMC must have a system in place to ensure than an assignment offer includes information sufficient to allow the appraiser to determine whether he or she can competently complete the assignment. This information includes property identification, assignment conditions, and scope of work requirements.
- To register, an AMC must have a system in place to track the client on each assignment, as well as the appraiser or appraisal entity that accepts each assignment, and it must provide certain information about the format in which records are kept, how electronic records are backed up, where the records are kept, and the name of the records custodian.

A committee comprised of appraisers and AMC professionals worked very closely with Division staff to craft these proposed rule amendments. Public comments will be accepted through October 1, 2010. When the proposed rule R162-2e is made effective, the existing rule R162-150 will be repealed.

MORTGAGE

On July 22, 2010, several amendments to rule R162-2c went into effect. These amendments create the term "branch lending manager" and establish that a branch office may not renew its license at the end of this year unless a branch lending manager is assigned to oversee operations there. Additional changes in language and terminology were made so that the rule would track more closely with the language used by NMLS. In addition, a new subsection was created to clarify that a licensee may operate under the name of the entity by which the licensee is sponsored as well as under any branch name or other trade name registered under the entity license.

On August 22, 2010, two additional amendments went into effect:

- Subsection R162-2c-402 was added to outline the circumstances under which the Division and Commission may convert a license revocation to a license suspension. These guidelines reflect the S.A.F.E. Act provisions regarding criminal history.

- Subsection R162-2c-203 was amended to require that a person seeking certification as an instructor of Utah-specific prelicensing education must pass the principle lending manager exam rather than the mortgage loan originator exam.

On September 1, 2010, an amendment to Subsection R162-2c-204 was published for comment in the Utah State Bulletin. This amendment provides that a mortgage loan originator who, within the 2010 calendar year, completes all requirements to obtain a PLM or ALM license may request renewal at the end of this year without completing additional continuing education. Public comments will be accepted until October 1, 2010.

REAL ESTATE

No rules have been amended since the last newsletter was published. However, we are getting very close to publishing a complete reorganization of the existing real estate rules. We are reworking them so as to use a statutory numbering scheme, and we're sure that this will make it much easier for licensees to use and understand the rules.

Mortgage Branch Management

Under NMLS regulations, a mortgage branch must have an individual designated to work from the branch location and oversee operations there. Under rules promulgated by the Mortgage Commission, this qualifying individual must be licensed as a PLM/ALM (see R162-2c-201(5)). Rules have recently been finalized to create the term "branch lending manager," or BLM, to describe this individual and to establish that a branch office must designate a BLM as part of the 2010 renewal process. A branch office that fails to comply with this requirement will not be able to renew its license this fall.

A word of advice to anyone who is pursuing a PLM license in order to act as a BLM for a sponsoring entity. Wait to request the new PLM license until after the renewal period opens on November 1, 2010. If you request and obtain the new license any earlier, you will have to pay to obtain it, and then turn right around and pay to renew it.

******COMING SOON******

DIVISION OF REAL ESTATE

NEW AND IMPROVED WEBSITE

WWW.REALESTATE.UTAH.GOV