

Utah Department of Commerce

Division of Real Estate

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

NEWS

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FOURTH QUARTER 2012

2013 Mortgage License Renewal

The on-time mortgage license renewal period ended on 12/31/12. The license renewal numbers appear to closely resemble the previous year's statistics. As of the publication deadline for this article (12/27/12) 2,926 mortgage loan originators submitted their 2013 mortgage license renewal requests with the NMLS; 661 mortgage entities and mortgage branches requested license renewal.

Unresolved license deficiencies may needlessly delay some individuals and companies from having their applications processed in a timely manner. **All license deficiencies need to be resolved in order for renewal requests to be processed.** In some instances deficiencies have been placed on licenses many months ago and remain unanswered.

Under NMLS policies all mortgage industry licenses are annually processed during a two-month renewal window. This condensed renewal period necessitates that mortgage licensing staff complete license renewals for approximately 4,496 requests. Applications are processed on a first come first serve basis. Those applicants that have completed all renewal requirements and have resolved all deficiencies will be renewed first. Attempts will be made to contact licensees with outstanding deficiencies, but renewal will not occur until those deficiencies are resolved. **Those individuals and entities that fail to resolve outstanding deficiencies will soon have their licenses suspended in the NMLS.**

Division staff have already processed 74% of loan originator renewal applications and 72% of mortgage entity and branch office renewal requests. It may take several weeks to process the final year-end renewal request surge.

791 originators and 118 entities and branches failed to submit their 2013 renewal requests and their licenses have now expired. **All first residential mortgage loan origination must cease by expired originator and/or entity and branch licensees until their licenses are reinstated.** Originators and entities/branches that failed to request license renewal by the year-end deadline now fall into the two-month reinstatement period which ends on February 28, 2013.

Mortgage License Reinstatement Period

1/1/13 - 2/28/13

Individuals and entities who failed to submit a license renewal application by December 31, 2012 may obtain a license by meeting the reinstatement requirements by 2/28/13. After the reinstatement period ends, expired licensees will need to meet new application licensing requirements (both NMLS and the State of Utah) and submit a new mortgage licensing application through the NMLS.

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DIRECTOR'S MESSAGE



Jonathan Stewart

The holiday season, now behind us, is a time when we all try harder to think about others instead of ourselves. We look for those who are in need and help those who have fallen on hard times get back on their feet. Why should we limit this kindness to just one season? Serving others can be part of the work we perform year-round. In American society, we frequently refer to "The Golden Rule." Confucius also taught:

己所不欲，勿施於人。

*"What you do not wish for yourself,
do not do to others."*

If this simple saying were followed more closely, many of the complaints the Division receives would not exist. Treating others the way we want to be treated would promote civility and healthy competition in Utah's real estate industry, prevent unnecessary complaints, and ultimately benefit the homeowners and soon-to-be homeowners we serve.

As a former investigator for the Utah Division of Consumer Protection and the Utah Division of Securities, I have seen many cases where it was apparent that the accused was trying to do less for more money. In many instances, the subject of a complaint said they were "trying to help" someone, but in reality, their actions hurt others while they personally benefitted greatly. Licensees with the Utah Division of Real Estate have an obligation to demonstrate honesty, integrity, and truthfulness. I recently came across a pledge from the South Dakota Association of Realtors. Part of the pledge states:

- To protect the individual right of real estate ownership and widen the opportunity to enjoy it;
- To be honorable and honest in all dealings;
- To seek better to represent my clients by building my knowledge and competence;
- To act fairly towards all in the spirit of the [Golden Rule](#);
- To serve well my community, and through it my country;

<http://www.sdrealtor.org/consumerinfo/realtorpledge/>

Let's all take a moment at the beginning of this New Year and reflect on how we can better serve our clients. By following what we know as "The Golden Rule" I believe we will all have a happy and successful 2013.



RULE DEVELOPMENTS SINCE October 1, 2012

APPRAISAL

The following amendments were published for comment in the Utah State Bulletin on November 15 and the comment period closed on December 17. No comments were received and so the Board voted to make these rules effective.

- R162-2g-302: Subsection (7) is repealed. This section establishes deadlines and procedures for re-registering trainees who obtained an initial registration prior to January 1, 2008. All deadlines have now passed, and this section of the rules is no longer needed.

continued on next page

RULE DEVELOPMENTS SINCE October 1, 2012

- R162-2f-304d: Subsection (2)(b) is amended to state that experience credit may not be awarded to an applicant for any appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.
- R162-2g-504: Subsection (4) is amended to remove language regarding an application for registration as an expert witness. Due to changes made to the statute in 2012, the Division no longer registers expert witnesses. Subsection (6) is amended to allow the presiding officer in an adjudication to require a respondent to provide a witness and exhibit list.
- A new section number, R162-2g-601, is included to separate the appendices from the main body of the rules.
- R162-2f-401a: Amended to clarify and distinguish the duties of a licensee in transactions for which a certificate of occupancy has been issued and transactions where a certificate of occupancy has not been issued.
- R162-2f-401b: (12) adds an exception to paying a finders fee that allows a individual licensee to compensate an unlicensed employee or current tenant up to \$200 per lease for assistance in retaining an existing tenant or securing a new tenant. Also, (23) prohibits charging any fee that represents the difference between the total concessions authorized by a seller and the actual amount of the buyer's closing costs, or in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.
- R162-2f-401c: Replaces several references to "transaction" with "real estate transactions" to add clarity. Also, at (1)(i)(ii), adds requirements for property management company management of client funds.
- R162-2f-401i: Changes an internal reference from R162-2f-401c(1)(1) to R162-2f-401c(1)(i).
- R162-2f-401k: Updates and clarifies standards for property management, and the activity permitted to be performed by unlicensed employees of property management companies.
- R162-2f-403 is repealed and re-enacted as three sections
 - R162-2f-403a: Providing general provisions for trust accounts
 - R162-2f-403b: providing provisions for real estate trust accounts
 - R162-2f-403c: providing provisions for property management trust accounts.

REAL ESTATE

On December 9, 2012 the Real Estate Commission voted to open for public comment the following rule amendments:

- R162-2f-202b: A new section is added eliminating dual principal broker licenses, which previously allowed a single individual to function simultaneously as the principal broker for two registered entities, as long as one is a real estate brokerage and the other is a property management brokerage. The section also requires that current dual broker licensees do one of three things prior to January 1, 2014 to one of the entities: convert it to a branch office, assign another person who is licensed as a principal broker to serve as the principal broker for the entity, or close the company and cease all real estate and property management activities under the company name.
 - R162-2f-205: Section (1) is amended to eliminate reference to "a separate property management company", and replaces it with "dba."
- The comment period on these rule changes will be open from January 15, 2013 through February 15, 2013.



Welcome New Appraiser Board Member



John E. Ulibarri, II Appraiser Licensing Board Member

On his appointment to the Appraisal Board John Ulibarri said, "I am grateful for the opportunity to serve as a member of the Board. I look forward to working with my fellow board members and the Division of Real Estate to serve the appraisal community." He has served the appraisal community in various capacities including as a Trustee for the Utah Association of Appraisers, President of the Utah Assessor's Association and President of the IAAO (Utah chapter). John started his profession in real estate as a residential fee appraiser before transitioning into a career as an ad valorem appraiser in Davis County. John currently has the honor to work as the Weber County Assessor.

Mortgage Licensees May Want To Take NMLS Uniform State Test (UST)

The NMLS will soon complete development of a Uniform State Test (UST). The UST is proposed by the NMLS as a quasi-universal state test that many states are selecting to serve as their NMLS state test rather than having a unique state test. The UST is designed to become a new section or component of the NMLS National Test. This new test section will include 25 questions which will bring the length of the National exam to 125 questions.

29 state agencies intend to adopt the UST

6 state agencies (including Utah) do not intend to adopt the UST

22 state agencies are undecided

The new UST subject matter will test applicants on their knowledge of information contained in the SAFE Act and Model State Law (MSL) that was recommended for adoption by the NMLS to state licensing agencies but was never adopted by The Utah state legislature. The UST content does not combine content from multiple state tests, and none of the UST questions will involve state specific content. It is also very likely that some of the questions on the UST may be in direct conflict with one or more Utah state statutes.

Implementation of how the NMLS Utah state exam will be administered in conjunction with the UST.

- **National Test** – The current test component will be available for enrollment for all eligible candidates up to and including **March 31, 2013**. On April 1, 2013 the National Test Component will no longer be available for enrollment.



**Mortgage Licensees May Want To Take NMLS
Uniform State Test (UST)** *(continued from previous page)*

Who is eligible to enroll? – All candidates who are seeking state licensure and have not passed the National Test Component are eligible to enroll for this test component.

- **National Test With UST** – This test component will be available for enrollment for eligible candidates beginning on **April 1, 2013**. It will replace the current National Test Component.

Who is eligible to enroll? – All candidates who are seeking state licensure and have not previously passed the National Test Component.

- **Stand-alone UST** – This test component will be available for enrollment for eligible candidates beginning **April 1, 2013**. Eligible candidates may enroll in the test for a period of one year ending March 31, 2014. Beginning April 1, 2014, the Stand-alone UST will no longer be available for enrollment. Candidates who enroll to take the test before April 1, 2014 will have the usual 180-day window to schedule and take the test.

Who is eligible to enroll? – All candidates who have passed the National Test and who are seeking (or who may later seek) licensure in a state which has adopted or may adopt the UST.

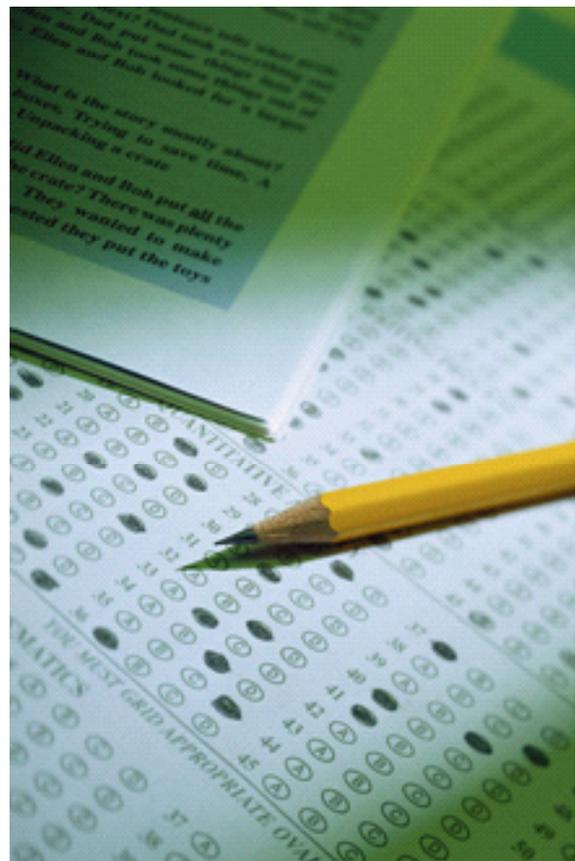
- **State Tests** – These test components will be available for enrollment for all eligible candidates as long as any state requires passage of its state specific test (which Utah does).

Due to the relatively small number of questions included in the new UST content section, the UST will always be scored as part of the National Test Component. For candidates who enroll and take the National Test after April 1, 2013, the UST content will be part of that test. For candidates to receive a passing score of 75% they will need to get at least 87 questions correct out of the 115 scored questions.

For candidates who take the Stand-alone version of the exam, they will take a 25-question test. However, the 25 questions will then be combined with the score from the candidate's official results on the National Test Component and the two scores will be combined to produce the candidate's UST score.

Formal confirmation that the UST is consistent with the SAFE Act by the CFPB will not be produced until January 2013 at the earliest.

Existing Utah mortgage licensees (lending managers and mortgage loan originators) may want to voluntarily take the 25 question UST between April 1, 2013 and March 31, 2014 if they anticipate wanting to be licensed in any state that adopts the UST.



Kagie's Korner

Why use the Real Estate Licensing System (RELMS)?



Since January 1, 2011, the Division discontinued the use of change cards in a hard copy format.

Past Division newsletters have addressed the issue (Third and Fourth Quarters 2010, Second Quarters of 2011 and 2012), but due to a number of recent issues raised by licensees, we wanted to once again address the issue of how RELMS can assist licensees in several ways.

Real estate and appraiser licensees can and should use the RELMS system to manage their license. In RELMS, a licensee can change their brokerage affiliations, address, e-mail address, and phone number. Licensees can also change between active and inactive status, renew a license, and verify or confirm that requested changes were made.

Neglecting to use the RELMS system to make or verify changes regarding your license can result in some unfortunate consequences. The Division routinely sees problems which result in enforcement actions that could have been resolved or mitigated by a licensee properly using and verifying their RELMS account on a consistent basis.

Failure to verify that a change was processed through RELMS provides no "free pass" or "safe harbor" from the consequences of simultaneously working for two companies or performing activity that requires a license with an inactive real estate license. The Division receives complaints similar to the situations described above on a regular basis. Both the sales agent and their brokers are subject to discipline for such misconduct. Regarding these situations, the Division can, and has, taken action against the licensee and the broker.

Potentially, the fines for these violations can be up to \$5,000.00 per violation, and possibly other sanctions on the license.

Examples of some of the issues we are seeing include the following:

- An active real estate licensee, moves across town and fails to update his/her mailing address in RELMS. This often leads to a couple of problems. Remember, the Division sends renewal reminder postcard notices, and ultimately your license to the address you have specified as your public address in your personal RELMS account. Many times this results in the licensee either failing to renew their license in a timely manner (if at all), or inaccurately believing that their license is either inactive or active, or improperly believing they are affiliated with one real estate brokerage when they are actually licensed with another. Not receiving your renewal notice or failing to verify status changes in RELMS and relying merely on your "recollections" often results in licensees forgetting to renew or to make required changes to their license (e.g. changing licensing status from inactive to active, brokerage changes, etc.

Updating a licensee's e-mail address and mailing address are required by Administrative Rule R162-2f-207 (1)(a) (ii). Many licensees have old or outdated e-mail addresses in their RELMS account which means that they will not receive important Division notifications (including the Quarterly newsletter). To change your e-mail address:

- Log into your RELMS account
- Click on the My Account tab at the top of your RELMS home page
- Enter your new e-mail address.

To change your public mailing address while in your RELMS account, click Change Address. When the

Division mails notices to your RELMS public address (even if your address has changed) the notification is deemed to have been delivered. Another reason to verify information in your RELMS account is explained in the Division's statutes (61-2f-207 for Real Estate, and 61-2g-402 for appraisers): failing to notify the division of a change regarding your license is grounds for a disciplinary action, and could lead to a fine by the Division.

- An agent wants to change affiliations to a different brokerage. The agent logs into RELMS and requests the change, leading to an e-mail being sent to both company's principal (or branch) brokers. The agent assumes that the change has automatically taken place, however, they fail to confirm that the change occurred in RELMS. Remember, both brokers are provided up to **ten days** to acknowledge the change. If either broker fails to acknowledge the change within the **ten day** time frame, the change request is no longer valid. If the licensee still wishes to request the change, they must start the process again by first, cancelling the failed pending request and second, initiating a new request for change. RELMS does not send a notice if the requested change has not been completed; therefore there are instances where a requested change is not finalized. In these instances, the licensee is still listed with the prior brokerage meaning that the original broker continues to be responsible for the licensed conduct of the agent and all licensed activities can only be transacted with the original brokerage. The Division has taken disciplinary action when an agent presumed that they were authorized to work for a requested "new" brokerage when in fact the change request was never completed.

An important note: in lieu of the requested change process described above where an agent is dependent on both brokers acknowledging/accepting the change before the change is performed, the agent seeking the change may elect to accelerate the process by sending a certified letter mailed to the departing broker notifying them of their decision to leave, while the new broker will then be the only broker that is required to electronically accept the change. **Brokers: Please promptly acknowledge/accept change requests in order to help prevent instances where an agent wrongly believes that they are authorized to work at a new brokerage.**

- An agent desires to go from inactive status to active status. The agent logs into RELMS and starts the process, but never receives an active license issued by the Division. As in the example described above, the Division sees problems where the change did not occur (the new broker failed to accept the incoming agent within the ten day acceptance period and the change request was no longer valid). In this instance the licensee remains on inactive status. In these circumstances, the licensee starts to work for the company that they thought they were now affiliated, when in fact they have been performing activity that required a license while their license was inactive.

So how can you as a licensee save yourself some headache? Changes made on RELMS are updated by 11:00 am the following business day. We would strongly recommend that licensees and brokers regularly check RELMS to ensure that affiliation changes were made and are accurately reflected in RELMS.



THIRD QUARTER LICENSING & DISCIPLINARY ACTIONS



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.

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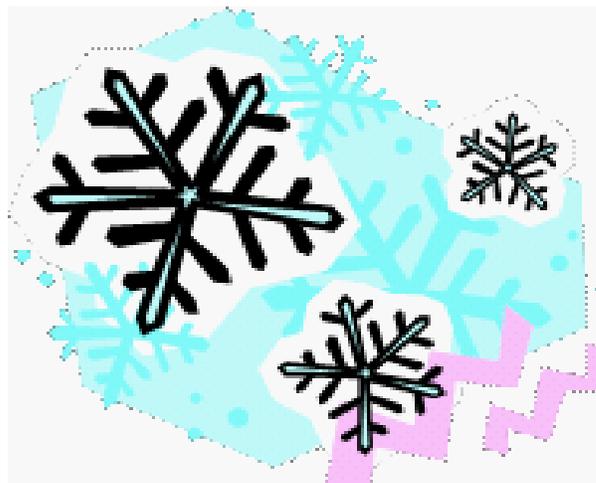
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Do You Have A Question Or A Suggestion For The Division?

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

Submit questions to: DREnewsletter@utah.gov

The Division received a question from a licensee regarding electronic signatures. The licensee noted an increase in the use of electronic signatures, and asked if the Division has promulgated rules to address the issue.

To answer this question, we have to look beyond the Division of Real Estate's rules, to a statute signed into law in 2000—the *Utah Uniform Electronic Transactions Act*. This Act, codified at Chapter 46, Section 4, of the Utah Code states that electronic signatures are equivalent to ink-on-paper signatures when each party to a transaction “has agreed to conduct transactions by electronic means.”

The Act provides minimal guidelines for the presentation of electronic records. Basically, it requires that electronic records be capable of being retained by the recipient. This means that a record must be able to be printed or stored. The Act defers to any other law that governs the form or presentation of records. So, for example, if a law requires that a disclosure be made in bold 12 point font, this requirement is not abrogated by UETA.

The UETA also considers documents that require a notary stamp by referring to the *Notaries Public Reform Act*, Utah Code Title 46, Chapter 1, which allows for a notary acknowledgment on an electronic message, even without the imprint of the notary's seal, so long as the electronic message contains the notary's full name and commission number, and the words “notary public,” “state of Utah,” and “my commission expires on _____ (date)”.

The Act does not apply to the creation and execution of wills, codicils, or testamentary trusts and documents created under Title 70A, Uniform Commercial Code, with certain exceptions. In other words, some documents related to estate planning and the UCC must use traditional ink signatures.

Additionally, the UETA specifically states that the Act does not require county recorders to accept electronic documents for recording.

So, when it comes to your own business practices, the UETA puts the ball in your court to determine if you want to accept electronic signatures for most types of documents.

With regard to documents that licensees or prospective licensees file with the Division of Real Estate, the Act does not speak directly. The Act does mandate that certain government agencies accept some documents electronically, but the forms required by the Division of Real Estate are not among them. Nevertheless, as real estate and appraisal licensees know from using RELMS, and as mortgage licensees know from using NMLS, industries are placing increased reliance on electronic sources of information. The Division acknowledges that more and more transactions are made through electronic means, especially with the proliferation of tablets and smart phones, and will continue to strive towards greener practices with less reliance on paper.



Annual Instructor Development Workshop

Highlights

Nationally Recognized Educator

Instructors and industry experts from Utah were regaled by Len Elder, J.D., B.A., DREI at the 2012 Instructor Development Workshop (IDW) in Park City. In late October, Mr. Elder made a powerful, passionate and persuasive presentation to a large gathering of Utah Educators. His training seminar was filled with many varied techniques to capture student interest and creatively educate. Sessions of his workshop included: Learning the magic of a winning presentation, succeeding with technology as a presenter, and using the art of storytelling. Instructors from around our state attended this two day event, and came away with numerous new thoughts, plans and presentation ideas.

A panel discussion of experts included members of our Real Estate Commission (Chair H. Thayne Houston, Russell K. Booth and Lerron E. Little), Appraisal Board (John E. Ulibarri, II), and Mortgage Commission (Lance Miller), as well as Division Director Jonathan Stewart. They provided comments and their thoughts regarding the state of their industries as well as challenges our professions are facing. They also responded to questions from attendees.

Division personnel were also in attendance and made presentations the afternoon of the second day of the workshop. Division Director Jonathan Stewart spoke on several topics including proposed modifications to qualifying questions on initial license and renewal applications. Jeffery Nielsen, Chief Investigator, discussed disciplinary and enforcement issues. Michael Palumbo, Division Hearing Officer, examined rule changes that took place in 2012. Mark Fagergren, Director of Licensing & Education, spoke of modifications to the sales agent and principal broker exams and other licensing matters.

Attendees of the 2012 IDW made the following comments on their evaluations:

“Loved it! It has been a very beneficial educational two days! Tiffeni and her staff were Wonderful!! Thank you!!”

“It was very nice to have an interactive session with regulators and the Real Estate Commission”

“The best CE course I’ve ever taken! Hi energy. I loved it.”

“This course was well selected, well planned and presented as well as any similar course I have taken over 34 years in real estate”

“Excellent – Shockingly informative!”

“A great instructor. Well worth the time. I appreciate the work of finding him and bringing him here”

“—Excellent Course, helpful, relevant, motivating—“

We would like to thank the attendees of the 2012 IDW for helping to make this event such an outstanding success. We are very fortunate to have so many outstanding educators in Utah that take such a sincere interest in meeting the changing needs of our licensees. Special thanks to Tiffeni Wall, The Division Real Estate Education Coordinator, for making essential hotel, meal, printing, and instructor travel arrangements which made a successful IDW possible.

