Utah! 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

FIRST QUARTER 2010

-Mortgage Licensees- Transition Information On NMLS

We are now three months into the transition process through which all mortgage licensees must submit their licensing record information directly into the Nationwide Mortgage Licensing System (NMLS). We now have only two months remaining in this transition process! We are more than half way through the NMLS records transition; however, currently only 2,807 out of 9,027 (31%) of Utah licensees have submitted transition requests onto the NMLS. We have a long way to go to reach the goal of having all licensees submit their information into the NMLS system and, subsequently, DRE staff to review and process each individual transition request.

Failing to submit your licensing records into the NMLS system by May 31, 2010 will result in you having to reapply for a mortgage license when your license expires on 12/31/10. To reapply, you will have to complete all licensing procedures including but not limited to: completing 20 hours of NMLS pre-license education, completing 40 hours of Utah DRE pre-license education, and passing both the NMLS national AND Utah state exams.

Don't get left out in the cold. Plan now to assemble and start the records submission process into NMLS. This record entry procedure into NMLS could easily take you several hours even after you assemble all your records.

We realize that transition onto the NMLS system can seem challenging and, to some, nearly overwhelming.

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APPRAISERS TAKE NOTE!

by Craig Morley, Appraiser Board Member

This is a very interesting time in the appraisal industry. With so much going on, the Appraiser Board wishes to point out a few things that all appraisers need to be aware of.

1. USPAP 2010 is now in effect! Appraisers, remember that you are required to maintain a current USPAP manual—don't wait for the update course to get yours and become familiar with the changes and new provisions. One of the new provisions involves disclosure requirements. ***If you have had any involvement with a property in the three years preceding the date on which you are assigned to appraise it, you must disclose that involvement.*** First, you must disclose it to your client before accepting the assignment. Second, you must disclose it in the appraisal certification.

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From the Director's Desk

Deanna Sabey

There is an old saying that states, "Nothing is permanent in life except change." Many of you are dealing with significant changes in terms of the pressures and obstacles you encounter to make deals happen. While business is beginning to improve, turbulent times are not over. The pendulum has swung back to a far more conservative lending environment. Banks and mortgage bankers have tight restrictions from federal regulators that curtail lending on real estate-backed assets. Lenders worry about compliance with the Home Valuation Code of Conduct. Appraisers are caught between what underwriters request and what their training mandates. Short sales, loan modifications, and foreclosures are more common now than they have ever been in the past. These transactions require additional levels of knowledge and sophistication from the professionals who are involved with them. The challenges to the real estate, appraisal and mortgage industries may feel overwhelming, but remember, "Nothing is permanent in life except change." So hang on!

This past legislative session brought a number of changes to real estate laws. Representative Wilcox successfully ran HB 53 aimed at halting unscrupulous foreclosure rescue and loan modification practices. The bill defines foreclosure rescue and loan modification assistance, specifies that only licensed brokers and agents may provide foreclosure rescue services as that term is defined, and clarifies that only licensed mortgage loan originators may perform mortgage loan modifications. The bill also includes prohibited conduct for individuals performing mortgage loan modifications or foreclosure rescue activities. With these provisions in place, the DRE will have better statutory tools for going after people who engage in harmful practices. We encourage you to report any unlicensed person who provides mortgage loan modification or

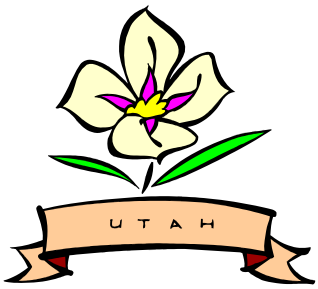
PROHIBITED CONDUCT AND PRACTICES
for licensees who engage in Foreclosure Rescue Services and Loan Modifications

You may not:

- request or require a person to pay a fee before executing a written agreement defining the services you will provide
- require a person to forfeit the fee if the lender forecloses on the property within one year from the date on which you and your client execute the written agreement for services
- suggest to a person that you have a special relationship with his or her lender or loan servicer
- falsely represent or advertise that you are acting on behalf of a government agency, a lender or loan servicer, or a nonprofit or charitable institution
- recommend or participate in a foreclosure rescue that requires a person to transfer title to you or to a third party with whom you have a business relationship or financial interest
- advise a person to make a mortgage payment to anyone other than his or her loan servicer
- tell a person to refrain from contacting his or her lender, loan servicer, attorney, credit counselor, or housing counselor
- effective May 11, 2010, engage in foreclosure rescue or loan modification without offering in writing to the client a right to cancel the agreement within three business days after the day on which he or she enters the agreement.

foreclosure rescue services or anyone who is violating one of the provisions on the list of prohibited conduct. Also this legislative session, Representative Froerer ran the Division's clean-up bill, HB 275. The intent of HB 275 was threefold: 1) to fix incorrect language; 2) to clean up confusing and inconsistent language; and 3) to make the statutes more user-friendly. Industry groups and individuals hustled to review the bill after the Division was permitted to make it available for comment. These good people jumped right in and—in a short period of time—provided valuable input that helped strengthen the bill and correct errors. The bulk of the statutory changes relate to the real estate section of Title 61. The bill drafter moved the real estate section into its own subpart 2f. The mortgage section in subpart 2c also changed to clarify NMLS requirements for licensure, including affiliation and sponsorship requirements. The bill also includes new provisions that affect all three professions. First, because the Division needed an effective way to hold accountable licensees who pay fees with bad checks, the bill includes a provision to suspend the licenses of people who pay their fees with bad checks until the Division receives good funds. Second, the bill provides that, when the Division incurs copying or data transfer costs during an investigation of a licensee who is thereafter found in violation of Utah law or Division rules, the licensee will be required to pay those costs. Lastly, the Division found that paying a penalty of $2,500 per violation is nothing more than the cost of doing business to some bad actors. The maximum penalty per violation is, therefore, increased to $5,000. We are frequently asked what the Division is doing to stop bad actors from committing fraud and providing bogus foreclosure rescue and mortgage loan modification services. We screen every complaint we receive and investigate those that appear to involve violations of statute or rule. Before we can begin this process, we need to receive complaints. If you see violations occur, the Division encourages you to file a complaint with us. An on-line process will be available shortly so you can simply fill out a few fields on your computer screen, attach the relevant documents, and submit your complaint with a mouse click. Right now, there is a complaint form on our website that you can print out and complete. With more reporting through your efforts, the Division can do a better job of enforcing the laws and rules meant to protect your clients and, ultimately, your business.

Despite the difficult market we're currently experiencing, real estate is still a great business. There is still a need for people to arrange financing in order to purchase homes—and that will never change. We're already seeing the market start to recover in the first-time homebuyer arena, and all indications point toward a gradual recovery throughout the market. Hang in there!



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-Mortgage Licensees-

The need to be informed and comply with complicated new licensing requirements while also trying to make a living in a very difficult marketplace can at times be very daunting. With these concerns in mind, much time and effort has been expended by DRE staff in an attempt to consolidate and simplify into one easy-to-read chart for all essential NMLS procedures and deadlines for mortgage licensees.

The center section of this newsletter (pages 16 and 17), contains a detailed chart outlining critical NMLS transition, certification, and renewal procedures and deadlines. We hope that having this information in one location will aid those licensees who are attempting to comply. This chart will not make the licensing requirements any less challenging; however, we hope that this chart can serve as a roadmap to guide you over the remainder of this year as you deal with the smorgasbord of requirements and deadlines.

Please keep this chart available and handy. Review the information contained in the chart personally and with your co-workers to ensure that you are keeping up with the critical timelines outlined over the months ahead.

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APPRAISERS TAKE NOTE! (cont.)

by Craig Morley, Appraiser Board Member

Note that being "involved" with a property means more than having appraised it. Dealing with a property under a different license (builder, real estate agent, mortgage loan officer, etc.) also triggers this disclosure requirement.

2. Many AMCs send out broadcast e-mails offering appraisal assignments. The first appraiser to respond to the e-mail gets the assignment. Services have been developed to retrieve these assignments for appraisers for a fee. Under USPAP, any fee paid for the retrieval of such an assignment would be considered a referral fee. ***Therefore, if you are using such a service, you must disclose the fee in the appraisal report.***

3. AMCs are now governed in Utah by both statute and rule. An AMC brokering more than 10 appraisals in the state must be registered with the DRE. When you receive an assignment from an AMC, check the DRE website to make sure the AMC is registered. ***If it isn't, report it to the DRE.*** In addition, the AMC is required to have the appraiser include in the body of the appraisal report the entire fee charged by the AMC, as well as the fee split between the AMC and the appraiser. ***If an AMC refuses to disclose this fee information to you or prohibits you including the information in your report, report it to the DRE.***

4. There is an ongoing problem with appraisal reports that are produced by trainees. Several articles have been published in the newsletter addressing this issue, but it won't hurt to mention it again. Here are the rules:

- A trainee ***may not*** sign the appraisal report.
- The trainee's specific participation in the appraisal development and reporting must be disclosed in the appraisal certification.
- The appraiser signing the report must comply with all scope of work and assignmentconditions

described in the report. If the scope of work states that the appraiser has inspected the property, you cannot sign the report unless you have visited and physically inspected both the subject property and the comparable sales.

Under the appraisal rules, you may allow your trainee to complete unsupervised inspections after you have jointly performed 100 inspections. ***However, you cannot sign off on a statement that you personally inspected the property unless you really did personally inspect the property.***

5. USPAP requires that an appraiser be competent to complete an appraisal assignment. Fannie Mae report forms have specific competency certifications that the appraiser must attest to, as follows: Some appraisers are attesting to these statements without having independent access to the MLS in the area where the subject property is located. In this situation, the appraiser relies on the real estate agent to provide all of the sales data. Don't do this. The real estate agent has an interest in the transaction and might filter the data in order to assure a certain outcome. You must have independent access to the data source in order to sign off on these Fannie Mae certifications.

- I have knowledge and experience in appraising this type of property in this area.
- I am aware of, and have access to, the necessary and appropriate public and private data sources such as the multiple listing service, tax assessment records and public land records and other such data sources for the area in which the property is located.

6. Appraisers are facing increasing pressure to complete appraisals faster and for less money. Given these circumstances, some appraisers are yielding to the temptation to take shortcuts in developing and reporting appraisal conclusions. When that happens, we see complaints from homeowners whose appraisals come in below the agreed purchase price. When you are assigned to determine "market value," you must make sure that your analysis is consistent with the definition of that term.

"Market value" is very different from "liquidation value." If you take an average of adjusted values derived from random sales comparisons—including short sales and foreclosure sales—you're likely to generate a value that falls short of market value. Keep in mind that a low appraisal can violate USPAP. ***In fact, it is just as bad to be too low as it is to be too high.*** While we do not want you appraising to a sales price, we expect you to develop credible results based on the best available market data. To determine whether a comparable sale accurately reflects market value, use this four-part test:

- Were the buyer and seller typically motivated?
- Were the buyer and seller well informed and acting in their own best interests?
- Was the property exposed to the market for an adequate period of time?
- Was the purchase price cash equivalent?

If you cannot answer "yes" to all four questions, the sales price might not reflect market value. Verification of sales data is essential in developing a credible opinion of value. Don't take shortcuts.

A Tale of Two Mortgage Loan Originators

Once there were two MLOs. The first was named Mr. Smarty. In the fall of 2009, Mr. Smarty received a letter from the DRE explaining that he would soon need to begin the process of transitioning his license onto the NMLS database licensing system. He carefully read the letter and entered the deadlines into his PDA. In January of 2010, he reviewed the letter and began gathering the information that he would need in order to transition. He put together his employment and address history for the past 10 years. He reminded his PLM that the company would need to register in the database before any of the MLOs could complete their registrations. He updated his e-mail address in his RELMs account so that he would receive the newsletters sent out by the DRE. When a newsletter arrived in his inbox, he read it carefully to determine if there were any requirements he had missed or failed to understand.

In early March, he had everything in place. So he entered his information into the NMLS database, and shortly thereafter his registration was approved by the DRE, more than two months ahead of the **May 31, 2010** deadline! As time went by, he kept current with the year-long transition plan. Having verified that he had sufficient education to satisfy the prelicensing requirements, he logged into NMLS on May 15 and paid the fee for education certification. The DRE was immediately able to certify his education—well ahead of the **July 31, 2010 deadline!** He completed his continuing education in a timely manner and spent a few minutes during his lunch every day studying up on the material that would be tested on the national portion of the exam. In August, he took and passed that exam and had his fingerprints taken and submitted to NMLS. He filed his renewal request on **November 1, 2010**; his renewal was quickly approved, and he was able to pursue his business without any interruptions or crises.

The second MLO was named Mr. Pokey. He received the same letter that Mr. Smarty received in the fall of 2009, but he was busy making cold calls, so he set it aside to look at later.

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Mortgage Change Cards

Since the first of this year, mortgage licensees and entities have been granted access to the National Mortgage Licensing System (NMLS) **for licensees to submit licensing records and complete the transition process.**

Those entities and individuals who have successfully transitioned their licensing records to NMLS now have the capability to electronically make licensing changes directly through the NMLS system (similar to the Division on-line RELMS system that mortgage licensees were using before the NMLS system became available).

Due to the transition to the NMLS, the RELMS system has been disabled for mortgage licensees. Therefore, they cannot use RELMS to perform status changes and license renewals. The only function that will remain available for mortgage licensees through RELMS until the end of this year is the capacity to review continuing education course completion information.

Now that the NMLS system has become the repository for Utah mortgage licensing records, those individuals and entities that have successfully transitioned should use the NMLS to electronically make **changes in their records.** Rather than submitting electronic or paper change cards to the Division, **both individuals and entities need to make status changes directly into the NMLS system.** The DRE staff cannot enter or transmit licensee records or status changes to the NMLS on behalf of a licensee.

Examples of the changes that should be completed electronically in the NMLS system by those entities and individuals that have transitioned their licenses are as follows: terminating sponsorship (to go inactive), requesting sponsorship (to go active), making address changes, updating employment histories, and changing license type (from a PLM to an ALM or vice versa).

For those mortgage entities and individuals that ***have not yet*** transitioned their license information onto the NMLS system, **remember...the deadline for transition is fast approaching--5/31/10.** Until these entities and individuals transition, they will have to use paper change cards to make the changes listed above. Change cards must be submitted directly to the DRE (by fax, e-mail, or mail). **The DRE will stop accepting paper change cards after May 15, 2010. Thereafter, the only way to make record changes will be through the NMLS database.**

In summary, if you have transitioned your records to **NMLS**, submit records changes **directly to the NMLS.** If you have not yet transitioned your records, submit change cards (http://realestate.utah.gov/mortgage/change_Mort_20091230.pdf) to the DRE until you complete your records transition to the NMLS. All mortgage licensees may continue to confirm the status of their continuing education on the DRE website (https://secure.utah.gov/relms/index.html) until the end of 2010.

Thank you for your cooperation during this important year of change in the mortgage industry.

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 someone who has 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?

https://secure.utah.gov/relms/index.html

Staff Spotlight

Craig Livingston

Appraiser Investigator

Craig Livingston attended the College of Southern Utah and Brigham Young University where he studied Sociology and Physical Education. After graduating he taught high school at Wasatch High School in Heber, Utah. He taught history and health while also functioning as the basketball coach.

He left teaching and started his own business in the insurance industry. He worked for Allstate Insurance Company for over thirty years. Craig sold his business and started working for the Division of Real Estate in June of 2005. He initially worked as a real estate investigator but two year later started conducting appraisal investigations. He enjoys the challenges he faces as he unravels complex appraisal cases. He says "…it is like putting a large puzzle together."

When Craig is not investigating at the Division he is an avid sportsman. Talented in all sports his favorites are playing softball, basketball and golf. He spends his off time soaking up the sun at Lake Powell with his family. Craig has 13 talented grandchildren and he and his wife love spending time watching them play soccer, basketball, and baseball (they are all "chips off the old block"). He is a proud grandpa and especially enjoys traveling to tournaments watching them play.

We are pleased to have Craig Livingston work for the Division of Real Estate!

Didn't Receive Division Electronic Newsletter? Here are two probable reasons why…

- **Failure to set up and/or maintain your current e-mail address on the Division On-line RELMS account** (and for mortgage licensees, also their NMLS account). Click here to establish or update your correct e-mail address on RELMS: https://secure.utah.gov/relms/index.html

- **Check your spam filter.** Some filters screen out mass e-mail mailings (which the Division notifications and newsletters are). DRE notifications come under the heading "Utah Division of Real Estate." You may want to see if the newsletter is buried in your spam filter. To solve this problem, add "Utah Division of Real Estate" to your computer contact list, to receive DRE notifications.

SPRING CARAVAN 2010

3 Hours of FREE CORE CE!

Logan ~	April 20, 2010
Layton ~	April 27, 2010
Provo ~	April 29, 2010
Park City ~	May 4, 2010
St. George ~	May 11, 2010
Richfield ~	May 12, 2010
Moab ~	May 13, 2010

Watch for your mailer with specific location and times!

TAKE NOTE – NEW RULES

Several changes in the Appraisal rules have become effective since December 31, 2010, when you received the last DRE newsletter. The chart below summarizes the basic changes. Click on the rule number to read the text of the rule as it is currently in effect.

Rule	Effective Date	Summary Of Change(S)
R162-110	1-7-2010	• New trainees registering with the DRE must undergo a background check. • Trainees who registered with the DRE prior to the implementation of this background check requirement must re-register according to certain deadlines, the first of which is January 1, 2011—the clock is ticking! • Registered trainees must renew their registrations every two years.
R162-101	1-21-2010	• The definition of "reinstatement" is modified to track with the statutory provision allowing 12 months for reinstatement of an expired license, certification, or registration. • The definition of "trainee" is modified to comply with the AQB requirement that a trainee must be supervised by a certified appraiser. • Language is changed to establish that a person pursuing a license or certification must track and submit experience hours, but no longer has to keep track of points.
R162-102	1-21-2010	• Trainees are included in the rules for renewal and reinstatement. • The rule for reinstatement is modified to allow for a 12-month window in which to reinstate an expired license, certification, or registration.
R162-104	1-21-2010	• Trainees seeking licensure must track and submit experience hours, but no longer have to keep track of experience points.
R162-105	1-21-2010	• Information about trainee registration is deleted, as the information has been incorporated into the new rule R162-110. • Several provisions are modified to track with the change in rule R162-104, which no longer requires the logging of experience points.
R162-106	2-3-2010	The following are exempted from complying with USPAP when acting in an official capacity: • DRE staff members and employees • members of the experience review committee • members of the technical review committee • hearing officers • members of county boards of equalization • administrative law judges • members of the Utah State Tax Commission • members of the Appraisal Board

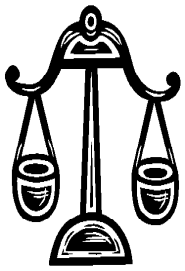
The entire body of mortgage rules has been re-organized, restructured, and updated to include the requirements for transitioning and renewing a license under NMLS. Click here to see the new rules, which will become effective on April 7, 2010.

Now that the real estate statute has been reorganized by the Legislature, the DRE is going to reorganize and restructure the real estate rules. They will look very similar to the new mortgage rules. Stay tuned!

The Appraisal Board is working on some amendments to the rules governing AMCs. Those changes should be published for public comment some time in April. To review all of the rules that are out for public comment, access the Utah State Bulletin as published by the Division of Administrative Rules.

First 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.

Inactive Mortgage Licensees Require Continuing Education

Under provisions of the SAFE Act, inactive mortgage licensees are required to complete continuing education every year in order to renew their license. Similarly, active mortgage licensees (including PLMs and ALMs) will need to complete 14 hours of continuing education in order to renew their licenses at the end of this year. For additional details see chart on pages 16 and 17 of this newsletter.

Appraiser Segmented Applicants
-Deadline Approaches-

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).

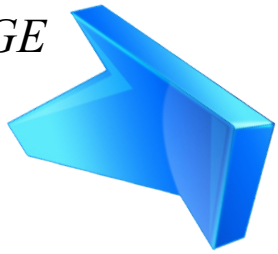
Once you complete your experience and submit your experience log(s), the information will be reviewed and a determination made by the Appraiser Licensing and Qualification Board as to whether your experience qualifies you to sit for the appraisal exam for which you have applied. This process typically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

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.

SEE FORM ON NEXT PAGE



www.realestate.utah.gov
ON-LINE RELMS

Available Online Services:

Renew License
Change Address
Change License Status
Change Affiliation
Manage Company Roster
Order Duplicate License
View CE Courses Taken
View and Order License History
It also shows banked non-certified continuing education

Utah Appraiser Experience Log

Name of Appraiser Applicant: _____

Signature: _____ Date: _____

Certification, License or Trainee Number: _____

Sub-totals *this* page: Hours _____

Applicants must enter hours subject to maximums permitted in Board rules (R162-104-15)

[You may claim credit up to 100 percent]

File #	Report Date	Subject Address	Client	Prop. Type*	Report Form # or Type**	Hrs	Rule # (Mass Appr Only, 104.15.3 ___)	T - Trainee S – Supervisor (instructions below)	1. Highest & Best Use Analysis - 10%	2. Neighborhood Description & Analysis - 10%	3. Inspection of Subject & Comparables - 20%	4. Land Value Estimate - 20%	5. Sales Comparison Analysis - 30%	6. Cost Analysis - 20%	7. Income Analysis - 30%	8. Final Reconciliation of Value - 10%	9. Report Preparation - 20%	10. Other
		Address						T										
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***Property Type:** 1) Single Family, 2) Condo, 3) 2-4 Unit, 4) Commercial, 5) Industrial, 6) Agricultural, 7) Land, 8) Other

****If there is no Report Form # (i.e. 1004 or 1025), abbreviate report type: SC = self-contained, S = summary, RU = Restricted Use**

Trainees only must follow the directions below. Licensed or Certified Residential Appraisers do not need to complete columns 1 thru 10 (unless being supervised).

1) Trainee: Indicate to which portions of the assignment you contributed by putting an "x" in Columns 1 thru 10. (Trainee "T" row)

2) Supervisor: Indicate whether you: **P** – Had **P**rimary Responsibility **C** – **C**o-appraised **R** – **R**eviewed and Approved, for each portion of the assignment (Supervisor "S" row)

3) Prepare a separate log for e*ach Supervisor.* **Dates must be listed in chronological order.**

Supervisor Name (Print)_____ **Supervisor's Cert No.** _____

Supervisor Name (Sign)_____ **Date Signed** _____

Rev. 2/2/10

Page # _____ of _____ pages

KAGIE'S KORNER

Referral Fees: Who can give them and who can receive them?

Investigator Van Kagie is asked this question quite often. The statues and administrative rules that govern referral fees in the real estate and mortgage industries are discussed below.

Real Estate

May an inactive real estate licensee be paid a referral fee for referring a client to an active agent?

> Utah Code § 61-2-10(2): *An inactive associate broker or sales agent may not conduct a real estate transaction until the inactive associate broker or sales agent becomes affiliated with a licensed principal broker and submits the required documentation to the division. An inactive principal broker may not conduct a real estate transaction until the principal broker's license is activated with the division.*

A referral is a real estate transaction because it helps a licensee secure a potential client. In order to be paid a referral commission, a licensee must be active with a Principal Broker and may receive payment of the fee only through the licensee's Principal Broker.

May a real estate licensee pay a referral to an unlicensed person or entity? The answer to this question depends on whether or not the referral was solicited.

> Administrative Rule R162-6.1.9. Finder's Fees: *A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.*
>
> Administrative Rule R162-6.1.9.1. Token Gifts: *A licensee may give a gift valued at $150 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.*

Note that the allowable value of a token gift was increased on November 23, 2009 from $50 to $150. A real estate licensee may not go to a person or entity and say, “If you send me a referral and it results in a transaction, I will pay you a referral fee.” This type of statement is a solicitation and would violate this rule. However, a licensee's uncle might say to his neighbor, “My nephew is an agent, and he can help you sell your house.” This would be an unsolicited referral. If the neighbor then lists his home with the licensee and the home sells, the licensee could give his uncle a gift valued at up to $150.

May a real estate licensee get a referral fee for referring a client to a mortgage licensee? No. Accepting any type of referral fee from a mortgage licensee is prohibited by rule. Administrative Rule R162-6.1.10.1. Referrals of Prospects to Lender or Mortgage Broker: *A licensee may not receive a referral fee from a lender or a mortgage broker.*

Mortgage

May a mortgage licensee give or receive a referral fee? No. A mortgage licensee is prohibited by statute from paying or receiving a referral fee.

Utah Code § 61-2c-301: (1) *A person transacting the business of residential mortgage loans in this state may not:*

(a) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business;

(c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing services related to a residential mortgage loan transaction.

If in doubt, or if you have a question about whether a referral would fall under any of the above restrictions, you should talk with your Principal Broker or your Principal Lending Manager, who is your first line of defense in helping you to comply with the statutes and rules governing referral fees.

Here is a chart that should help you keep the rules straight regarding referral fees:

	Mortgage licensee	**Real estate licensee**
May I give a referral fee to an unlicensed person?	NO	NO
May I give a referral fee to another licensee?	NO, and it doesn't matter what type of license the person holds. No referral fees.	YES, but only IF the fee goes to another real estate licensee whose license is on active status. If an unlicensed person, an inactive agent, or a mortgage licensee asks for a referral fee, decline.
May I accept a referral fee from another licensee?	NO*	YES, but only IF you are actively licensed AND the fee is paid by a principal broker through your principal broker.
May I give a gift as thanks for a referral?	NO, and it doesn't matter who gave you the referral. No thank-you gifts.	Yes, but only IF the referral was unsolicited. • You can't ask for the referral. • You can't advertise that you give gifts for referrals. • You can't pay more than $150 for a thank-you gift.
May I accept a gift from a real estate licensee in thanks for a referral?	NO*	YES, but only IF you are actively licensed AND the gift goes through your principal broker.
May I accept a gift from a mortgage licensee in thanks for a referral?	NO*	NO*
***Report any such offer to the DRE for investigation.**		

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A Tale of Two Mortgage Loan Originators (Cont.)

At the company Christmas party, he overheard Mr. Smarty talking about NMLS, and he made a mental note to find the letter and look it over. But he couldn't remember where he had put it. He had several loans he was trying to close before the end of the year, and he assumed that he would probably get more informat ion from the DRE when the deadlines drew closer. So he decided not to worry about it until later.

In February, he started working to establish a business relationship with some real estate agents who focused on short sales. Because things were so busy, the whole NMLS business just slipped his mind. Although he had a RELMs account, he never updated it when he changed his e-mail address, so he didn't receive the DRE newsletters containing helpful reminders and checklists.

Before he knew it, May was upon him. His PLM sent out an e-mail saying that the company was registered and that any MLO who had not completed the process needed to make that the top priority. But Mr. Pokey didn't even know what he needed to do. In a panic, he called the DRE. The very helpful and patient employee who answered the telephone gave him some basic instructions and e-mailed him the links to the DRE website and to the NMLS database. When he finally looked at the MU4 form and realized that he had to put together a 10-year employment and address history, he nearly fainted. He had lived and worked so many different places over the past 10 years, he hardly knew where to begin. He put aside all his other work and slapped together the information as best he could. He entered it all into the database with just minutes to spare on **May 31, 2010** and hoped he might slide through.

Unfortunately, many other MLOs were doing the very same thing. The DRE was so inundated with transition requests that it took five months before anyone was able to process his registration. In the meantime, he forgot to pay the fee to have his education certified. Luckily, Mr. Smarty dropped by his office on **July 31, 2010** and reminded him, so he took care of that in the nick of time.

On December 15, 2010, having finally completed his continuing education, Mr. Pokey attempted to log into NMLS to request renewal of his license. However, his renewal could not be approved because he had neglected to submit his fingerprints to NMLS and take the national portion of the exam. He rushed to the nearest testing center to try to register for the exam. After waiting in line for two hours, he was able to have his fingerprints taken, but the testing center had no open seats for the exam. In fact, he could not find a testing center anywhere in the intermountain west with an open slot in December. He called the DRE in a panic to ask if he could get some sort of extension. Unfortunately, there are no extensions under NMLS. So his license expired on **December 31, 2010.**

He decided he would try to reinstate his license, knowing that he could do so until **February 28** by paying exorbitant late fees. He called every testing center from California to Colorado and from Arizona to Idaho and finally found an open slot in a Boise testing center. He scheduled himself to take the national portion of the exam on February 10, 2011. Unfortunately, he didn't have much time to review the material. So he failed the exam. He immediately tried to schedule himself for a retake, but learned that NMLS requires that anyone who fails an exam must wait 30 days before retesting. By the time 30 days had passed, Mr. Pokey's window to reinstate his expired license had closed.

Mr. Pokey had been unlicensed since December 31, 2010, and had not made any income in January or February. At this point, in order to obtain a license, Mr. Pokey would have to retake all 60 hours of the prelicensing education

and pass both the national exam and the state exam. He was out of money and extremely frustrated, so he decided to look for a different career. Mr. Smarty picked up his open files and made a killing off all his hard work.

MORAL OF THE STORY: There are **NO** extensions under NMLS. NMLS gives **NO** consideration to extenuating circumstances. There are NO exceptions to NMLS requirements. The DRE cannot give you any extension, exception, or special consideration because **NO SUCH THING EXISTS** under NMLS. Get it done early, or prepare to deal with the consequences.

Mortgage Branch Offices Soon to Require a Branch Lending Manager

Proposed rules from the Utah Residential Mortgage Regulatory Commission will soon require branch managers to supervise the activities of individuals working from every branch of a mortgage entity. The requirement for each new and renewing mortgage branch office to be supervised by a branch manager will take effect November 1, 2010, or at time of renewal.

All mortgage entities who currently have branches or who are considering branch offices should be aware that every branch will be required to have a branch manager who holds an Associate Lending Manager (ALM) license. These ALMs will be referred to as "Branch Lending Managers" (BLMs).

The Division and the Mortgage Commission believe that having a qualified branch manager supervising branch activities will assist licensees and support staff in following recommended industry best practices, company polices, and licensing statutes and regulations.

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Mortgage Licensees Import Information

- For information on NMLS certification of exam and education click here http://www.realestate.utah.gov/March10.CertificationLtrFinalII.pdf.
- For information on NMLS Criminal Background checks click here http://mortgage.nationwidelicensingsystem.org/profreq/background/Pages/default.aspx.

2010 Mortgage Licensing Deadlines for NMLS Transition, Renewal & Certification

To use this chart, follow the column that reflects the **date** on which your license was **originally issued**.

- If your license was originally issued prior to September 30, 2009, the first column applies to you.
- If your license was originally issued between October 1, 2009 and December 31, 2009, the second column applies to you.
- If your license was originally issued after January 1, 2010, the third column applies to you.
- If you have never been licensed, or if you have allowed your license to expire, the fourth column applies to you.

	Licensed prior to 9/30/2009	Licensed between 10/1/2009 and 12/31/2009	Licensed after 1/1/2010	Seeking licensure in 2010
Transition	• Request transition through NMLS at http://mortgage.nationwidelicensingsystem.org/Pages/default.aspx. • **DEADLINE**: 5/31/2010. **IMPORTANT NOTES** • All individuals and entities licensed as of December 31, 2009 must transition, **regardless of whether the license is on active or inactive status**. • If you fail to transition by **5/31/2010**, you will have to reapply as a **new applicant** when your current license expires on December 31, 2010.		No transition required.	No transition required. To license: 1. Complete all required pre-license education. 2. Schedule the NMLS national and Utah exams through NMLS. 3. Submit your fingerprints to NMLS. 4. Request licensure through NMLS.
Pre-license Education	• Certify your education through NMLS. • Certification start date: 5/1/2010. • **DEADLINE:** 6/30/2010. • Fee: $15.00—pay through NMLS. **IMPORTANT NOTE** If you fail to certify your education by **6/30/2010**, you will have to take **20 hours** of NMLS pre-license education in order to renew your license—that's 20 hours **in addition to** your continuing education hours.		You completed all necessary pre-license education in order to obtain your license; no further action required.	Complete the following pre-license education: • 20 hours of NMLS pre-license education **AND** • 40 hours of Utah DRE pre-license education • See list of DRE approved pre-license providers at http://real-estate.utah.gov/mortgage/UtahDivisionofRealEstate.htm
NMLS Criminal Background Check	• Submit your fingerprints to NMLS. • **DEADLINE**: the date on which you request renewal, **BUT NO LATER THAN** 12/31/2010. ***NOTE:*** Criminal background checks through NMLS are required every three years.		If you **LICENSED** with the DRE **between 1/1/2010 and 1/24/2010**: • Submit your fingerprints to NMLS. • **DEADLINE**: the date on which you request renewal, **BUT NO LATER THAN** 12/31/2010. If you **LICENSED** with the DRE on **or after 1/25/2010**, you do **not** have to re-submit your fingerprints.	Submit your fingerprints to NMLS as part of your application for licensure.
Utah State Exam	• Certify your Utah state exam. • Certification start date: 5/1/2010 • **DEADLINE**: 6/30/2010. • Fee: $5—pay through NMLS. **IMPORTANT NOTE** If you fail to certify your Utah state exam by **6/30/2010**, you will have to take the current NMLS Utah state exam in order to renew in 2010.		If you **PASSED THE EXAM** before **2/21/2010**: • Certify your Utah state exam. • Certification start date: 5/1/2010. • **DEADLINE**: 7/31/10. • Fee: $5—pay through NMLS. If you **PASSED THE NEW UTAH STATE NMLS EXAM on or after 2/22/2010**, no further action required.	Schedule and take the NMLS Utah state exam. To schedule this exam, use the NMLS website.

	Licensed prior to 9/30/2009	Licensed between 10/1/2009 and 12/31/2009	Licensed after 1/1/2010	Seeking licensure in 2010
NMLS National Exam	• Take and pass the NMLS national exam. • To schedule this exam, use the NMLS website. • **DEADLINE**: the date on which you request renewal, **BUT NO LATER THAN** 12/31/2010. **IMPORTANT NOTES** • There are **NO** exceptions to this exam requirement. • There are **NO** extensions to the December 31 deadline. • NMLS testing centers will be very busy. **SCHEDULE EARLY**. • You will have to wait 30 days to retest if you fail the exam. If you fail four times, you will have to wait 180 days before retesting.	You completed the NMLS national exam; no further action required.		Schedule and take the NMLS national exam. To schedule this exam, use the NMLS website.
Continuing Education	**To renew in 2010**, complete **14 hours** of Utah DRE **or** NMLS continuing education, **even if your license has been on inactive status**. ***NOTE***: These 14 hours must include: • 2 hours ethics • 3 hours federal/state laws governing mortgage lending	**To renew in 2010**, complete **8 hours** of Utah DRE **or** NMLS continuing education, **even if your license has been on inactive status**. ***NOTE***: These 8 hours must include: • 2 hours ethics • 3 hours federal/state laws governing mortgage lending ***NOTE:*** If your initial license is issued **on or after November 1, 2010**, you are exempt from continuing education for the year 2010. You will need to complete continuing education in 2011 to renew.		
	NOTE: Utah-approved continuing education **will not satisfy** the continuing education requirements of other states. • See list of approved Utah continuing education providers at http://realestate.utah.gov/mortgage/morteducation.html. • See list of approved NMLS continuing education providers at http://mortgage.nationwidelicensingsystem.org/courseproider.			
	To renew in 2011 and thereafter, complete **8 hours of NMLS** continuing education *in the year* your license will renew, **even if your license has been on inactive status**. ***Note***: These 8 hours must include: • 3 hours federal law and regulations • 2 hours ethics (fraud, consumer protection, and fair lending practices) • 2 hours non-traditional mortgages • 1 hour elective			
Expiration	• If you hold a license as of October 31, your license expires on December 31 of the same calendar year. • If you obtain a new license on or after November 1, your license expires on December 31 of the following calendar year.			
Renewal Period	• Opens November 1 of each calendar year. • Closes December 31 of each calendar year.			
	IMPORTANT NOTES • If you were licensed as of December 31, 2009 but failed to transition by May 31, 2010, **you may not renew**. Reapply as a new applicant. • Submit your request for renewal to NMLS at http://mortgage.nationwidelicensingsystem.org/Pages/default.aspx.			
Credit Report	You will have to authorize a credit report between October 2010 and April 2011. Additional information forthcoming when available.			

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