

# Utah! DIVISION of REAL ESTATE NEWS

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

Jon M. Huntsman, Jr., Governor

Fancine A. Giani, Executive Director

Derek B. Miller, Division Director

January 2007

Volume 2 -- Number 1

## Changes Made To Mortgage Unprofessional Conduct Rule

Recently Administrative Rule R162-205-1 was modified, so that Principal lending managers are now required to provide reasonable supervision over the activities of both licensed and *unlicensed* staff working for the entity.

Other rules dealing with the advertising or marketing of properties were also adopted. Unless acting as a real estate licensee and not as a mortgage licensee certain activities are prohibited. These acts are:

- 1) Providing real estate buyers or sellers with "comparative market analysis" or otherwise assisting buyers or sellers in determining the offering or sales price of real estate.
- 2) Representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate, *except* that a mortgage licensee *may* advise a borrower about the consequences that the terms of a purchase agreement may have on the terms and availability of various mortgage products.
- 3) Performing any other acts that require a real estate license.

continued on page 4

## Who's Your Continuing Education "Banker"?

Some typical phone calls received by the Division go something like this...

"I want to renew my license but when I checked my CE online some of my CE classes were not there?" (this applies to mortgage and /or real estate licensees)

"I called the CE provider and the provider informs me that they have submitted the CE roster(s) to the Division to be "banked" but "the Division has not completed the CE banking process".

"Why has the Division not banked my CE hours?"

continued on page 4

### In This Issue

From the Director's Desk.....	2
DRE Caravan.....	3
Smarter Appraisals.....	3
How many Mortgage Licenses are required?.....	5
Instructor Development Workshop.....	5
Non-traditional Mortgage Products.....	6
Inflated Appraisals.....	7
Licensing Actions and Disciplinary Sanctions.....	10
Approved CE.....	13
Licensee Statistics.....	15
Staff Spotlight.....	16
Administrative Rules Update.....	17
Appraisal Renewal.....	19

## From the Director's Desk



Derek B. Miller

Can you imagine a scenario where a police officer pulls someone over for a “hit and run” but when told that the driver doesn’t have a license the officer responds “well in that case you are free to go - if you don’t have a license there’s nothing I can do”? As ridiculous as this seems, it happens almost every day in the appraisal, mortgage and real estate industries. People who choose to obey the law and go to the time and trouble of getting a license are subject to regulation by the state, while those who ignore the law and refuse to get a license engage in otherwise illegal and unprofessional behavior with seeming impunity. It is bad enough when someone engages in the appraisal, mortgage or real estate business and doesn’t bother to get a license but what is worse is when someone commits fraud in these industries and the most the Division of Real Estate can do is to issue a Cease and Desist Order, telling the person to “please stop”.

This inequity in the law does not go unnoticed by the worst offenders. Often the Division will discover, while conducting an investigation, that serious allegations have been made against someone who should be licensed but is not. In these situations, the response from the unlicensed person is always the same, “the Division can’t do anything to me because I don’t have license”. Even in many cases where the person is licensed with the Division, while meeting with an Investigator regarding alleged illegal conduct, a person will surrender the license or let it expire just to “get the Division off their back.” Many times the Division will continue to get complaints that the person is engaging in the same illegal behavior but since they no longer have a license, the Division doesn’t have authority to investigate or prosecute the case.

The fact is that this inequity between licensees and those engaging in unlicensed activity is wrong and needs to change and that is exactly what the Division intends to push for in the upcoming legislative session. Working in cooperation with the Utah Association of Appraisers, the Utah Association of Mortgage Brokers, the Utah Mortgage Lenders Association, and the Utah Association of Realtors®, the

Division has drafted legislative amendments which will allow the Division to investigate both licensees (under the current law) AND those ***acting like an appraiser, a mortgage broker, or a real estate agent whether the person is licensed or not***. Additionally, the proposed amendments will allow the Appraisal Board, Residential Mortgage Commission and Real Estate Commission to conduct hearings and impose administrative sanctions on those acting in the capacity of a licensee. The actual change to the statutory language is fairly simple and straightforward – just adding the words “and those acting in the capacity of a licensee” – but the impact and the importance is immense.

Another priority for the Division during this legislative session is to give authority to the Appraisal Board, Residential Mortgage Commission and Real Estate Commission to aggressively pursue fraud. This can be done by expanding the amount of fines that can be imposed for those engaged in illegal activity (licensed or unlicensed). Current statutory limits for fines are \$1,000 for appraisal and \$2,500 for mortgage and real estate. In most cases, these amounts are enough to deal with minor infractions but there are many instances where a \$2,500 fine is less than the “cost of doing business”. Consider a recent investigation by the Division where a person (without a license but still putting buyers and seller together just like a licensed real estate agent would) was artificially inflating values on homes with falsified appraisals, finding straw buyers, skimming the equity and walking away from closing with a \$300,000 “consulting fee”. What does a \$2,500 fine mean to someone who is doing three or four of these types of deals each month? Not much! But, with the ability to impose a fine “in the amount equal to any economic gain derived from the illegal act” you can bet that people committing fraud will start to take notice. That is the type of authority your peers on the Board and Commissions should have and that is the type of authority our amendments will give them.

I appreciate the support of the industry groups in moving forward with this legislation. With the Division working

*continued on next page*

*continued from previous page*

hand-in-hand with the UAA, UAMB, UMLA and UAR, we can be a powerful force at the Legislature. In addition to the support of the professional associations, I am also asking for your individual and personal support for these legislative initiatives. The general legislative session is only once a year and only for a few weeks. Take the time to be involved with your association, talk to your Legislator, let your voice be heard in expressing your concerns and what is important to you while these important issues are being discussed and decided.



## Agents Need To Be Smarter About Appraisals

(WASHINGTON) – The head of the Appraisal Institute says real estate brokers and mortgage lenders must shoulder some of the blame in the increase in mortgage fraud, saying, “many of the problems related to appraiser-related mortgage fraud would be addressed if lender-clients engaged competent appraisers to begin with.”

“As it is, the business of home appraisals too often gravitates to the least qualified, least experienced appraisers as lenders and brokers consider price and turnaround time as their most important criteria when choosing an appraiser, rather than designations, education, qualifications and experience,” said Richard Powers, president of the Institute.

Powers said a remedy to the mortgage fraud issue would include “expansion of education for all parties in the real property transactions, particularly about the appraisal process.”



RE Intelligence Report

**DRE CARAVAN  
COMING  
TO A LOCATION  
NEAR YOU!**



*Watch for the Divisions annual spring Caravan. We will be in St. George, Richfield, Moab, Provo, Brigham City and Park City. Pre-Registration cards and agenda will be sent out soon.*

Can an inactive Agent receive a referral fee?



61-2-10.2 An inactive associate broker or sales agent is not authorized to conduct real estate transactions 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 is not authorized to conduct real estate transactions until the principal broker's license is activated with the Division.

*continued from page 1*

## Changes Made To Mortgage Unprofessional Conduct Rule

- 4) Advertising the sale of real estate by the use of any advertising medium, except that a mortgage licensee may:
  - a) Advertise real estate owned by the licensee as a “for sale by owner”;
  - b) Provide advertising to a property owner who has not signed an agency agreement with a real estate licensee and is selling the real estate “for sale by owner”, so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the property owner and the mortgage licensee; or
  - c) Advertise in conjunction with a real estate brokerage, so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the real estate licensee and the mortgage licensee.

These rules were adopted by The Real Estate Division after a working group was created to explore possible advertising regulations. This task force involved members of the Division staff, Utah Residential Mortgage Regulatory Commission and representatives from both the mortgage and real estate industries.

The Division is confident that that these rules will address problems associated with previously unregulated advertising that was both confusing and somewhat misleading to members of the general public. These rules attempt to address this issue with confidence that licensees will embrace these disclosure requirements without the need for further regulation.



*continued from page 1*

## Who's Your Continuing Education "Banker"?

These types of comments reflect a common misunderstanding that the Division banks CE credit hours for licensees. **This is not true.**

When a CE provider becomes certified by the Division, they are mailed an approval letter explaining their responsibilities to the Division as well as the licensee, one of those being that they must bank CE courses for all licensed attendees. Existing mortgage rules and a proposed real estate rule require CE providers to “bank” CE attendance within 10 days of completing the course.

Therefore, if you log on to check your CE account and it ~~does~~ include credit for each real estate or mortgage course you have completed since January 1, 2006, you will need to contact the provider of the course. Those providers who do not promptly bank attendee’s credit hours are subject to discipline by the Division. If the licensee is not satisfied with the providers “banking” service they may choose not to take continuing education from them in the future.

**Note to the wise: Check your CE account balance on a regular basis. Don’t learn on the last day of your renewal cycle that the CE provider you have taken your courses from has failed to give you credit.**

*continued on next page*

*continued from previous page*

Reminder: Each licensee can verify whether their CE credits have been banked by their provider(s) by going to: [www.promissor.com](http://www.promissor.com)

- Click on “Continuing Education Services” (located under the services title).
- Click on “Find a Continuing Education Registry Licensing Look-up”.
- Scroll down to Utah Real Estate, then click go.
- Click on “Licensee Course Transcript”.
- Enter in your license number or your SS# and your last name.
- A complete list of all the CE course that have been banked by the providers will show in a printable list.



## How Many Mortgage Licenses Are Required?

Holding either an active PLM license or a Mortgage entity license alone are insufficient to conduct mortgage lending in Utah. The Division routinely learns that an individual holding a PLM license is conducting mortgage business *without* an affiliation with an actively licensed mortgage entity. Similarly mortgage entities that renew their licenses are *often surprised* to learn that an active PLM license is also required to solicit residential mortgage loans in Utah.

Both an active PLM and Entity (Company) license are required for any mortgage officer, PLM or entity to conduct mortgage business in our state.

Don't be caught “off-guard” without the required licenses. Investigators and auditors are routinely making inquiries to verify that individuals and companies are properly licensed to make residential loans. Don't let your name be put in the disciplinary actions “who's who” by neglecting to have the appropriate license to perform your profession.



## Division Holds Successful Instructor Development Workshop



The Division's annual Instructor Development Workshop (IDW) was an overall success. Over 100 pre-license and continuing education instructors from the Real Estate, Mortgage and the Appraisal industries recently attended the Division sponsored IDW at the Radisson Hotel in Salt Lake. National instructor author and trainer Deborah Long keynoted the two-day training course for instructors. She motivated instructors to sharpen their teaching skills, provided educational teaching strategies and taught new instructional techniques. Deborah also shared information on teaching students with different learning styles and diverse backgrounds.

The workshop included an afternoon session where DRE Director, Derek Miller, Education/Licensing Director, Mark Fagegren, and Enforcement Director Jon Brown provided educators with DRE updates, new rules and interesting stories.

Thanks to all those who attended and provided feedback for next years IDW



# CSBS and AARMR Offer Guidance On Non-traditional Mortgage Products

(Combined article presented to licensees from both  
The Utah Division of Real Estate and  
The Utah Department of Financial Institutions)

The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have offered guidance on nontraditional mortgage products with the expectation that state agencies that regulate residential mortgage brokers and lenders would issue guidance for use by their respective licensees.

In recent years, consumer demand and secondary market appetite have grown rapidly for mortgage products that allow borrowers to defer payment of principal and, sometimes, interest. These products, often referred to as nontraditional mortgage loans, including “interest-only” mortgages and “payment option” adjustable-rate mortgages have been available in similar forms for many years.

Lenders are increasingly combining these loans with other practices, such as making simultaneous second-lien mortgages and allowing reduced documentation in evaluating the applicant’s creditworthiness. While innovations in mortgage lending can benefit some consumers, these layering practices can present unique risks that lenders must appropriately measure, monitor and control.

Concerns are elevated with nontraditional products due to the lack of principal amortization and potential accumulation of negative amortization. Further concerns arise due to the fact that these products and practices are being offered to a wider spectrum of borrowers, including some who may not otherwise qualify for traditional fixed-rate or other adjustable-rate mortgage loans, and who may not fully understand the associated risks.

Nontraditional mortgage loan products are more complex than traditional fixed-rate products and adjustable rate products and present greater risks of payment shock and negative amortization. Lenders should ensure that consumers are provided clear and balanced information about the relative benefits and risks of these products, at a time that will help consumers’ decision-making process.

Areas of particular concern to regulatory agencies include the following:

Collateral-Dependent Loans - Lenders should avoid the use of loan terms and underwriting practices that may result in the borrower having to rely on the sale or refinancing of the property once amortization begins. Loans to borrowers who do not demonstrate the capacity to repay, as structured, from sources other than the collateral pledged are generally considered unsafe and unsound.

Risk Layering – Nontraditional mortgage loans combined with risk layering features, such as reduced documentation and/or a simultaneous second-lien loan, pose increased risk. When risks are layered, a lender should compensate for this increased risk with mitigating factors that support the underwriting decision and the borrower’s repayment capacity.

Reduced Documentation – Lenders are increasingly relying on reduced documentation, particularly unverified income to qualify borrowers for nontraditional mortgage loans. Because these practices essentially substitute assumptions and alternate information for the waived data in analyzing a borrower’s repayment capacity and general creditworthiness, they should be used with caution.

Simultaneous Second-Lien Loans – Simultaneous second-lien loans result in reduced owner equity and higher credit risk. Historically, as combined loan-to-value ratios rise, defaults rise as well. A delinquent borrower with minimal or no equity in a property may have little incentive to work with the lender to bring the loan current to avoid foreclosure. In addition, second-lien home equity lines of credit (HELOCs) typically increase borrower exposure to increasing interest rates and monthly payment burdens. Loans with minimal owner equity should generally not have a payment structure that allows for delayed or negative amortization.

Reproduced with permission from Daily Report for Executives, No. 204, pp. C-1 C-4 (Oct. 23, 2006)  
Copyright 2006 by the Bureau of National Affairs, Inc.  
(800-372-1033). <<http://www.bna.com>>



## Inflated Appraisals Emerging as Problem as Housing Market Slows

The willingness of many appraisers to inflate housing values for their clients may have played a sizeable role in aiding the double-digit price gains seen in the U.S. housing market since 2004 and no one is as concerned about it as the appraisal industry itself.

“What we have seen is an active market over the past three years and with that have come absolutely skyrocketing real estate values. Now we’re seeing that trend change and we’re going to be trying to determine how much of it was truly attributable to demand and how much was from overstated values,” Larry Disney, president of the Association of Appraiser Regulatory officials and executive director of the Kentucky Real Estate Appraisers Board, told BNA.

There is little data to prove how much of last year’s 13 percent gain in home prices might have been due to inflated appraisals, but a study conducted by October Research found that 55 percent of appraisers have reported being pressured by mortgage brokers or realtors to meet a predetermined value to help the home sale move smoothly.

**Suspicious Numbers.** Worse, October Research also found that 26 percent of appraisers admitted to inflating about one of every two property valuation reports they complete. Fannie Mae also reported that 99.5 percent of the appraisals done for loans it has purchased met the contract price. In theory, industry officials said the value provided by the appraiser should always match the sales price. In reality, however, buyers and sellers rarely have perfect information at the time of the transaction.

“I can understand how an appraiser would have a value at the full contract amount. If there are comparable sales that support the value opinion, if the house has been on the market for a reasonable period of time, if the seller is not giving any

big concessions, I can see it. But would that happen all the time-absolutely not,” Disney said.

Disney and other state regulators said it is no coincidence that most appraisals meet the contract price. With heavy workloads in the fast-moving real estate market and competition tight throughout the industry a significant number of appraisers must have been letting their standards slip.

Pressure from mortgage brokers or realtors to meet a predetermined number is one reason for inflated appraisals, but a more subtle cause may be that appraisers simply find it easier to make sure their report hits the number on the contract than risk disappointing a client and not getting paid for the report.

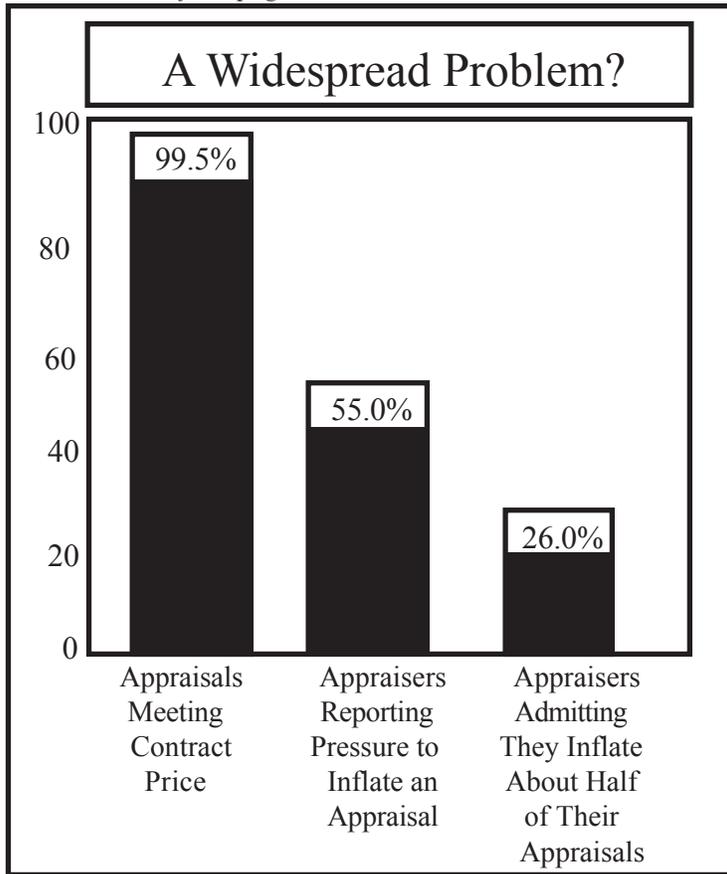
“The typical motivating factor for appraisers preparing fraudulent appraisals is repeat business,” said Rachel Dollar, a real estate attorney at the Dollar Law firm, during an Oct. 12 Appraisal Foundation conference on valuation fraud.

Even in clear cases of mortgage fraud where an appraiser acted as a willing accomplice in a plan to overstate the value of a property, the appraisers have often received nothing in return for the higher appraisal except for their \$350-\$450 fee, Dollar said.

**Appraisers Vulnerable to Broker Pressure.** Unlike in the 1980’s, when savings and loans and banks originated most of the loans for home purchases, about 80 percent of home buyers now use mortgage brokers for their loans. While the loan officers at banks face losing their jobs if there are too many defaults on their loans, the increased use of mortgage brokers in the industry “adds a party that doesn’t have an interest in the transactions—other than to see it go through,” said John Brennan, director of Research and Technical Issues at the Appraisal Foundation.

The burden is on the appraiser to choose the ethical route and not succumb to lender pressure, but in the real world, officials said most appraisers are running their own small businesses and are under financial pressure to get new clients and keep existing ones.

continued from page 7



Sources: Fannie Mae and October Research

A BNA Graphic/de6203g4

“Sometimes loan officers press them, saying: ‘We need to have you lighten up a little bit and work with me more so we all get paid.’ Appraisers know it’s wrong, but too often they’ll give in because it’s only a few thousand or because ‘Joe’s been a good client for years,’” said Bob Keith, administrator of the Oregon Appraiser Certification and Licensure Board.

With \$2.3 trillion in loan originations during 2005, even a small percentage of fraudulent or inflated appraisals could represent a significant amount of money. Disney said if an average appraiser accepts 300-400 assignments per year and is adding just \$10,000-\$15,000 per home, “that adds up to a lot of money” that may not be there supporting the loans made by banks.

Ironically, elements of the regulations covering appraisal standards, along with a lack of safeguards in place to keep brokers and realtors from exerting influence over appraisers, have contributed to some of the problems in the system.

One rule is that appraisals ordered by homebuyers cannot be accepted for loans that will be backed by federal institutions. Regulators said the theory is that buyers are too emotionally connected to the transaction and may try to influence appraisers to meet the necessary numbers, even if that means the house could cost them more. Brokers, however, who have only a financial interest in ensuring that the appraisal meets their clients’ needs, are allowed to order an appraisal.

“It may be time to look at those rules,” Brenan said. One solution is to have appraisals ordered only by a third party with no interest in the transaction, cutting out the possibility that realtors or mortgage brokers could try to influence the appraiser, officials said.

The Federal Reserve, the Office of the Comptroller of the Currency, and other banking regulators issued a guidance in 2004 saying that institutions must get their appraisals from independent sources, but stopped short of saying banks are required to have the appraisals ordered from parties outside of the transaction.

Another quirk stems from the standards developed to ensure that all appraisers are using the same procedures to ensure equality and consistency. Since the Savings and Loan crisis of the late 1980’s, Congress has required states to license appraisers and use the Uniform Standards of Professional Appraisal Practice (USPAP) as the basis for their regulations. USPAP outlines the appropriate methods for appraisers and requires that appraisers be given all available information about a property in order for the appraisal to be done, which typically includes the sale contract for a property.

While state regulators see getting the sales contract as necessary in determining appropriate value, some argue that receiving the sales price is akin to giving students a test with the answers attached.

“It has always troubled me that appraisers are given the price that was negotiated prior to the appraisal. To say that doesn’t have some effect on the price is, I think, naïve,” said Derek Miller, director of the Utah Division of Real Estate. But proving that an appraisal was intentionally inflated to meet a contract price can be tough, especially if it is a fast-moving market. Because of the vast number of transactions that occur and the nature of the industry, which relies on individuals’ opinions and their level of experience, officials said appraisers have a lot of flexibility.

“There aren’t many appraisers out there who are good enough to say: ‘The value of the house is \$245,000. I know you want \$250,000, but I can’t do it,’” Brenan said. Since so much of the job relies on experience and opinion, it is not uncommon for appraised values to differ by as much as 10 percent, particularly in situations in which a property is in a rural area with an odd-sized lot and several unique features. “Finding something truly comparable on some houses just isn’t possible all of the time,” Utah’s Miller said.

**Some have argued that being told the sales price beforehand, as currently required, is akin to giving students a test with the answers attached.**

**-Derek Miller, Director of the Utah Division of Real Estate**

In urban areas where there are a lot of similar houses, a strong sample of comparable sales, and a well-defined boundary for neighborhoods, a three percent variance between two appraisers on the same property might be more normal, he said. But the appraisal industry’s standard practices allow for large variations as long as the value opinion is well documented. “It’s like seventh grade algebra; you have to show your work,” Miller said.

**Lenders Tightening Review Process.** While relatively few complaints are being raised outside the real estate industry, there are enough concerns that banks have been tightening up their procedures for evaluating appraisals during the underwriting process.

Connie Wilson, executive vice president of Interthinx, a technology firm specializing in mortgage fraud detection tools for banks, said her staff has tripled in the last few months because of a growing volume of mortgage fraud cases.

“Of our 1,200-1,300 clients, there have been 48,158 times that lenders have come to us and said they never want to see an appraisal from a certain person again. Many of those 48,000 are counted more than once because there are several banks that will not use their appraisals, but that’s still a strong statement that banks never want to see reports from those appraisers again,” Wilson said.

Interthinx has also received another 45,000 requests from banks to place certain appraisers on a watch list so their appraisals reports are given an extra scrutiny before a loan is approved.

**Fraud Cases on the Rise.** The Federal Bureau of Investigation has said mortgage-related suspicious activity reports have jumped from about 5,600 in 2002 to 22,000 in 2005 as the real estate market has taken off. Losses due to mortgage fraud jumped from \$429 million in 2004 to more than \$1 billion in 2005.

Industry officials said that number is likely dwarfed by the number of appraisals that have been inflated due to negligence or incompetence, which would not be counted in the fraud figures because there was no proof of an intention to commit a crime.

While the FBI and regulators are most focused on larger cases of fraud, Disney estimates that they represent a small portion of the total level of fraud.

About 10 percent of the cases in which real estate has been overvalued in the United States are due to intentional efforts by appraisers to overstate a value, Disney said, compared to 70 percent of cases in which incompetence because of a lack of experience or proper training was the primary cause of the errant valuation. Disney said the other 20 percent of cases can be attributed to negligence, such as an appraiser failing to look at both the front and back of a house before issuing the report.

William Stern, supervisory special agent for the FBI’s mortgage fraud division, said the bureau is most worried about the major criminal enterprises and the rising number of incidents in which organized crime groups and terrorism-related individuals are attempting to raise cash through fraudulent real estate transactions.

Smaller cases that do not warrant the attention of the FBI are referred to state authorities, but state regulators said they do not have the resources necessary to properly investigate many complaints.

**Regulators Seeking More Funding.** “There’s simply not enough time or resources to catch the bad guys,” Oregon’s Keith said. He said a federal effort to either increase funding for appraisal industry regulators or at least encourage states to increase their funding would yield a major improvement in oversight.

Disney also said he is encouraging federal officials to seek more money for state regulators. His department has only four staff members, including Disney, and only

*Licensing Actions  
and Disciplinary  
Sanctions*

---

\*Pursuant to Utah Code 63G-4-106 and 107, all administrative disciplinary actions commenced over 10 years ago and certain actions over 5 years are not accessible online, but may be provided in response to a GRAMA request.

\*Pursuant to Utah Code 63G-4-106 and 107, all administrative disciplinary actions commenced over 10 yers ago and certain actions over 5 years are not accessible online, but may be provided in resonse to a GRAMA request.

\*Pursuant to Utah Code 63G-4-106 and 107, all administrative disciplinary actions commenced over 10 years ago and certain actions over 5 years are not accessible online, but may be provided in response to a GRAMA request.

# How Do I Find Approved Continuing Education Courses Through The DRE?

A list of approved Continuing Education courses for Real Estate, Mortgage and Appraisal can be found on the DRE website. Go to [www.realestate.utah.gov](http://www.realestate.utah.gov) click on Education, and choose the appropriate industry.

EXAMPLE BELOW

### Real Estate

Licenseses must complete 12 hours of certified continuing education every renewal cycle (2 years), including the mandatory three-hour Core Course. A minimum of 6 hours must be LIVE education. A maximum of 6 hours may be PASSIVE education (videos watched outside the presence of a pre-license instructor). Please verify the type of credit with the course provider. If you have taken a course that was not pre-certified by the Division you may submit an [Application for Real Estate Continuing Education Credit for a Non-Certified Course](#)

- [Pre-License Real Estate Schools](#)
- [Approved Continuing Education Courses](#)
- [Approved Continuing Education Courses \(online\)](#)
- [Approved Online Core Course Providers](#)



\*Pursuant to Utah Code 63G-4-106 and 107, all administrative disciplinary actions commenced over 10 yrs ago and certain actions over 5 years are not accessible online, but may be provided in response to a GRAMA request.



### When does an Agent need to disclose that he or she is a principal in a transaction?

R162-6.1.3. Licensee's Interest in a Transaction. A licensee shall not either directly or indirectly buy, sell, lease or rent any real property as a principal, without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. For the purposes of this rule, a licensee will be considered to be a "principal in the transaction" if he: a) is himself the buyer or the lessee in the transaction; b) has any ownership interest in the property; c) has any ownership interest in the entity that is the buyer, seller, lessor or lessee; or d) is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor or lessee.

*continued from page 9*

## Analysis & Perspective

one is an investigator. The Kentucky Real Estate Appraisers Board has also contracted with five other specially trained appraisers to help them conduct investigations, Disney said he is only scratching the surface of the problem.

“States see this program as an unfunded mandate and the federal oversight board needs to be able to ensure that there is an appropriate level of funding going to the state boards. There needs to be some sort of reporting mechanism to make sure every state has what it needs to operate on a day-to-day basis,” Disney said.

He recommended that states start using licensing fees from appraisers to fund appraisal boards, rather than simply put the money in the general fund.

State regulators and the Appraisal Foundation have also been pushing for help from the federal government to try to harmonize regulatory regimes and enforcement practices among the states.

Disney said the penalties for a violation may range from revoking a license in one state to a two-week suspension in the next state. Moreover, states are not required to share their information about licensing, so an appraiser that has been suspended in his home state may still be able to get a license in a neighboring state.

Industry officials also said Congress needs to consider giving the Appraisal Standards Committee a group of representatives from the nation’s five banking regulators—more authority to take enforcement actions against states that are not doing enough to crack down on appraisal or mortgage fraud problems.

Currently, the federal standards committee only has the authority to decertify a state’s appraisal board, which would prevent appraisals in that state from being used for any federally backed home loans, but that step has never been taken and is seen as an overly extreme action in most circumstances.

**False Sense of Security** Still, state regulators worry that there will be bigger problems in the near future without some help from the federal government.

Oregon’s Keith called appraisal inflation an “epidemic” because the values on every home that is appraised are based on sales prices of comparable homes in the area. If

those values were inflated as well, the problem may be much larger than most people imagine.

**“A lot of Americans...have been lulled into a false sense of security. If the system breaks, someone’s going to point a finger and it will probably be at us.”**

**-Robert Keith, Administrator, Oregon Appraiser Licensure and Certification Board.**

“A lot of Americans, I believe, have been lulled into a false sense of security. If the system breaks, someone’s going to point a finger, and it will probably be at us, the appraisal regulators,” Keith said.

Keith said he is especially concerned about the impact of a correction in prices on homeowners who have refinanced recently, possibly relying on an estimate of their home’s value that was questionable at the time of the appraisal. Should prices fall sharply on those “questionable” homes, it could leave a large number of Americans owing banks more than their homes are worth, Keith warned.

Disney also stressed that inflating an appraisal, regardless of how well-intended the reason, always puts the system at risk and hurts the credibility of the appraisal profession.

“If an appraiser says, ‘We’re going to give you \$10,000 here and help you buy a house,’ in my opinion, that’s just as egregious as someone overvaluing a house so it can be flipped,” Disney said.

While industry officials and regulators agree that there is a lot that can be done to tighten up the system and improve regulatory effectiveness, they also said such concerns are natural since the regulation of the appraisal industry is still relatively new.

The current system is “only in its infancy,” having been created between 1990 and 1992, so there is still a lot of potential for improvement, Disney said. “This period of allegations of fraud will focus more attention on us and ultimately make us bigger and stronger.”

By Brett Ferguson



*continued from page 6*

**CSBS AND AARMR Offer Guidance**

Introductory Interest Rates – Many lenders offer introductory interest rates that are set will below the fully indexed rate as a marketing tool for payment option ARM products. In developing nontraditional mortgage products, a lender should consider the spread between the introductory rate and the fully indexed rate. Since initial monthly mortgage payments are based on these low introductory rates, there is a greater potential for a borrower to experience negative amortization, increased payment shock, and earlier recasting of the borrower’s monthly payments than originally scheduled.

Lending to Subprime Borrowers – Mortgage programs that target subprime borrowers through tailored marketing, underwriting standards, and risk selection should follow the applicable interagency guidance on subprime lending. Among other things, the subprime guidance discusses the circumstances under which subprime lending can become predatory or abusive.

Non Owner-Occupied Investor Loans – Borrowers financing non owner-occupied investment properties should be qualified on their ability to service the debt over the life of the loan. Loan terms should also reflect an appropriate combined LTV ratio that considers the potential for negative amortization and maintains sufficient borrower equity over the life of the loan. Further, nontraditional mortgages to finance non owner-occupied investor properties should require evidence that the borrower has sufficient cash reserves to service the loan in the near term in the event that the property becomes vacant.

While nontraditional mortgage loans provide flexibility for consumers, regulators are concerned that consumers may enter into these transactions without fully understanding the product terms. Nontraditional mortgage products have been advertised and promoted based on their near-term monthly payment affordability, and consumers have been encouraged to select nontraditional mortgage products based on the lower monthly payments that such products permit compared with traditional types of mortgages. In addition to apprising consumers of the benefits of nontraditional mortgage products, lenders should ensure that they also appropriately alert consumers to the risks of these

products, including the likelihood of increased future payment obligations. Lenders should also ensure that consumers have information that is timely and sufficient for making a sound product selection decision.

To find the source information for this article proceed to the following website: [http://www.csbs.org/AM/Template.cfm?Section=Press\\_Releases\\_Archives&Template=/CM/HTMLDisplay.cfm&ContentID=7461](http://www.csbs.org/AM/Template.cfm?Section=Press_Releases_Archives&Template=/CM/HTMLDisplay.cfm&ContentID=7461)



<i>Licensee Statistics</i>	
As of January 2007	
<b>• REAL ESTATE</b>	
Sales Agents . . . . .	14,800
Principle Brokers . . . . .	2,253
Associate Brokers . . . . .	1,191
Branch Brokers . . . . .	210
Dual Brokers . . . . .	73
Property Management Brokers . . . . .	23
Real Estate Companies . . . . .	2,229
Pre-license Schools . . . . .	13
Pre-license Instructors . . . . .	50
CE Instructors . . . . .	430
CE Providers . . . . .	365
CE Courses . . . . .	779
Inactive Sales Agent . . . . .	4,209
Inactive Associate Brokers . . . . .	65
Inactive Principal Brokers . . . . .	314
<b>• MORTGAGE</b>	
Mortgage Lending Officers . . . . .	6,878
Principal Lending Managers . . . . .	1,179
Associate Lending Managers . . . . .	161
Mortgage Companies . . . . .	1,099
Pre-license Schools . . . . .	16
Pre-license Instructors . . . . .	58
CE Providers . . . . .	64
CE Instructors . . . . .	136
CE Courses . . . . .	388
Inactive Individuals . . . . .	2,524
Inactive Entities . . . . .	774
<b>• APPRAISERS</b>	
Certified General Appraisers . . . . .	360
Certified Residential Appraisers . . . . .	657
Licensed Appraisers . . . . .	178
Trainees . . . . .	457

# Staff Spotlight

## Enforcement Director

**JON R. BROWN**

### Retires From Division



During December, Jon R. Brown retired from the UDRE after 17 years of dedicated service. Jon came to the Division of Real Estate from the banking industry. He was the asset manager of the foreclosure department

of Valley Bank. Prior to that he worked for 20 years managing a small mortgage company.

One day while stopping to register a timeshare subdivision with the Division, Jon spoke to a Division employee who realizing Jon's background as a real estate broker and appraiser, suggested that Jon might want to speak with the Division about an employment opportunity as an investigator.

Thus the Division's working relationship with Jon began. He worked as an investigator for 8 years until he was promoted to Chief Investigator for the Division. He has served in that capacity for 8 years. For the past year he has served as Enforcement Director.

Overwhelmed with only two other full-time investigators, Jon "inherited" a caseload of 60 cases that were 4 years old when he began! Since that time the Division began regulating appraisers and 6 years ago mortgage officers came under the jurisdiction of the UDRE.

Jon has accomplished much in his time working for the Division. He is proud of streamlining the investigative and report writing process. "It is now much less cumbersome..." according to Mr. Brown. Other time saving processes have been introduced based upon Jon's recommendations. Jon delegated specific responsibilities to his now 10 investigators to enable them to make case closure recommendations and/or stipulated settlement offers. The result, if approved by the Board and Commissions, result in the disciplinary sanctions commonly seen in each newsletter.

Recently Jon was instrumental in recommending to the Division Director and Boards (mortgage and real estate), that hearings be conducted on an informal basis rather than the more time consuming and labor intensive formal hearing process, before an administrative law judge. As a consequence of this significant change, licensees are now provided a more timely hearing to determine the outcome of pending investigations.

Not only have Division case loads dropped significantly under the leadership of Mr. Brown (Real estate cases have dropped from 350 pending cases to 125 current cases, Mortgage cases have been kept at approximately 100 cases, and Appraisal cases have dipped from 270 cases to 106 current investigations), but the average turn around time for an investigation has been trimmed from 4 years to an average of 12 months.

Jon has astutely used his wisdom and depth of experience to the praises of both industry members and the general public. In 2001 Jon received the Salt Lake Board of Realtors' "Special Recognition Award". Jon says, "... Receiving this award was somewhat like Osama Bin Laden being awarded the Nobel Peace prize". Jon is unusual in that he has the unique ability to satisfy both licensed practitioners and consumers with his candid assessment of facts and quick wit.

Jon has a vivid memory and can recall many interesting as well as humorous stories over his years of service. For example, Jon tells of receiving an appraisal complaint about an appraiser that had recently passed away. In this instance the appraisal report was signed a few days after the appraiser's untimely death!?

*continued next page*

Once Jon received a complaint regarding a property that had skunks under the home. The new purchaser filed a complaint with the Division claiming that their children “smelled bad like skunks” and that this was causing a problem at their school. Jon dismissed this case since it was beyond the real estate agents’ control that a skunk chose to take up residency under their home.

The Division and industry both will miss Jon’s wisdom and wealth of knowledge. We wish him well as he retires to do some traveling and occasional continuing education instruction.



## Mortgage Rule Changes

*Complete text of administrative rules can be found on the DRE website [www.realestate.utah.gov](http://www.realestate.utah.gov)*

### **R162-208-7. Course Completion Certificate and Continuing Education Banking.**

208.7.2 For the purposes of this rule, “continuing education banking” is defined as the upload by a course provider of such information as specified by the Division to the Division’s data base concerning the students who have successfully completed a continuing education course, including the name of the course, the certificate number assigned to the course by the Division, the date the course was taught, and the names and license numbers of all students who successfully completed the course.

208.7.3 In addition to complying with the requirements of Subsection 208.7.1 and except as provided in Subsection 208.7.4, all course providers shall bank continuing education for all students who successfully completed a course within ten days after the course was taught.

208.7.4 A student must provide an accurate license number and the full name the student has registered with the Division to the course provider within 7 days after course attendance.

208.7.5 If a course provider is unable to bank a student’s continuing education credit because the student has failed to properly and accurately comply with the requirements of Subsection 208.7.4, the course provider shall not be disciplined by the Division for failure to bank the student’s continuing education credit.

## Real Estate Rule Changes

### **R162-3-5. Activation.**

3.5. All licensees changing to active status must submit to the Division the applicable non-refundable activation fee, a request for activation in the form required by the Division, and, if the license was on inactive status at the time of last license renewal, proof of completion of the examination within six months prior to applying to activate or proof of completion of the 12 hours of continuing education that the licensee would have been required to complete in order to renew on active status. If a licensee last renewed on inactive status and applies to activate the license at the time of license renewal, the licensee shall be required to complete the 12 hours of continuing education required to renew but shall not be required to complete additional continuing education in order to activate the license.

### **R162-3-6. Renewal and Reinstatement.**

3.6.1.1.1 Continuing education requirement for new licensees. During a licensee’s first license term, the licensee’s 12-hour continuing education requirement shall consist of the Division’s 3-hour “Core Course” and a 9-hour live “New Agent Course.” The Commission shall approve a standard course outline for the “New Agent Course.”

### **R162-6-1. Improper Practices.**

6.1.3.1. Disclosure of Licensed Status. Regardless of whether a person’s license is in active or inactive status, a licensee shall not fail to disclose in writing on any agreement to buy, sell, lease or rent any real property as a principal that the licensee holds a Utah real estate license.

### **R162-8-3. School Application for Certification.**

8.3.1.1 A real estate school shall obtain approval of the name under which it intends to provide prelicensing education prior to registering that name with the Division of Corporations of the Department of Commerce as a real estate education provider.

### **R162-9-2. Education Providers.**

9.2.3 Name approval. A real estate school shall obtain approval of the name under which it intends to provide continuing education courses prior to registering that name with the Division of Corporations of the Department of Commerce as a real estate education provider.

**R162. Commerce, Real Estate.****R162-11. Undivided Fractionalized****Long-Term Estates.****R162-11-1. Authority and Definitions.**

11.1.1 The following administrative rules are promulgated under the authority granted by Sections 61-2-5.5 and 61-2-26.

11.1.2 Terms used in these rules are defined as follows:

(a) "Affiliate" means an individual or entity that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, a specified individual or entity.

(b) "Entity" means any corporation, limited liability company, general or limited partnership, company association, joint venture, business trust, trust, or other organization.

(c) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

(d) "Undivided fractionalized long-term estate" is defined in Section 61-2-2.

**R162-11-2. Marketing Disclosures.**

11.2.1 All real estate licensees who market an undivided fractionalized long-term estate shall obtain from the sponsor and shall provide to purchasers in the form of written disclosures provided in a reasonable amount of time in advance of closing to allow adequate review by the purchaser, the following information:

11.2.1.1 Information concerning the sponsor and the sponsor's affiliates:

(a) The financial strength of the sponsor and all affiliates, as evidenced by current certified financial statements and current rent credit reports, and information concerning any bankruptcies or civil suits;

(b) Whether any affiliate of the sponsor is a third party service provider in the transaction, including mortgage brokers, mortgage lenders, loan originators, title service providers, attorneys, appraisers, document preparation services, providers of credit reports, property condition inspectors, settlement agents, real estate brokers or other marketing agents, insurance providers, and providers of any other services for which the investor will be required to pay.

(c) Whether any affiliate of the sponsor is a master lease tenant or whether the sponsor is an affiliate of any master lease tenant.

(d) Any use that will be made of purchaser proceeds.

11.2.1.2 Information concerning the real property in which the undivided fractionalized long-term estate is offered:

(a) Material information concerning any leases or subleases affecting the real property;

(b) Material information concerning any environmental issues affecting the real property;

(c) A preliminary title report on the real property;

(d) If available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;

(e) If applicable, rent rolls and operating history;

(f) If applicable, loan documents;

(g) The Tenants in Common agreement, or any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;

(h) All third party reports acquired by the sponsor;

(i) A narrative appraisal report, with an effective date no more than 6 months prior to the date the offer of sale is made, that includes at minimum pictures, type of construction, age of building, and site information such as improvements, parking, cross easements, site and location maps;

(j) All material information concerning the market conditions for the property class; and

(k) All material information concerning the demographics of the general market area.

11.2.1.3 Information concerning the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered:

(a) Contact information for any existing or recommended asset managers and property managers;

(b) Any relationship between the asset managers and the sponsor;

(c) Any relationship between the property managers and the sponsor; and

(d) Copies of any existing asset management agreements and any property management agreements.

11.2.2 All real estate licensees who market an undivided fractionalized long-term estate that is subject to a master lease shall obtain from the sponsor and provide to purchasers in a reasonable amount of time in advance of closing to allow adequate review by the purchaser, financial statements of the master lease tenant, audited according to generally accepted accounting principles. If the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, then the financial statements of the owners of that entity shall be furnished.

11.2.3 All real estate licensees who market an undivided fractionalized long-term estate shall, in a reasonable amount

of time in advance of closing to allow adequate review by the purchaser:

- (a) disclose in writing to purchasers:
  - (i) that there may be tax consequences for a failure to close on the purchase;
  - (ii) that there may be risks involved in the purchase; and
- (b) shall advise purchasers that they should consult with tax advisors and other professionals for advice concerning these matters.

### **R162-11-3. Regulation D Offerings.**

11.3 The Division and the Commission shall consider any offering of a fractionalized undivided long-term estate in real property that is compliant with Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 230.506 to be in compliance with these rules.

## **How Do I Renew My Appraisal License or Certification?**

Licenses are valid for a two-year period and must be renewed no sooner than six weeks prior to and no later than the expiration date. The expiration date is printed on the license and can also be found on the Division's Licensee Database.

**NOTE:** Renewal requirements must be completed prior to renewing your license. If your license expires, you cannot work until the license is reinstated. Your application is subject to audit for compliance with all renewal requirements.

To renew an Appraisal license, submit to the Division:

- Completed and signed License Renewal Form.
- Copies of education certificates totaling at least 28 hours, including the 7-hour National USPAP Update Course and related exam. (Remember Appraisers renewing their licenses may no longer submit courses that have been approved by the Division for either Real Estate or Mortgage continuing education to also count as Appraiser continuing education.)
- \$403 non-refundable fee.

*Division Director* .....Derek B. Miller  
*Editor/Contributor* ..... Mark Fagergren  
*Contributor/Layout* ..... Tiffeni Wall

© 2007 Published by

*Utah Division of Real Estate  
 Department of Commerce  
 160 East 300 South (84111)  
 PO Box 146711  
 Salt Lake City, UT 84114-6711  
 (801) 530-6747 main line*

#### **Real Estate Commissioners**

H. Blaine Walker (Salt Lake City), Chair  
 Bonnie Peretti (Park City), Vice Chair  
 Doyle C. "Sam" Sampson, Jr. (St. George)  
 Kay R. Ashton (Bountiful)  
 Gary R. Hancock (Sunset)

#### **Residential Mortgage Regulatory Commissioners**

Pierre Alley (Salt Lake City), Chair  
 Alan Bowyer (Salt Lake City), Vice Chair  
 Julie McCann (Salt Lake City)  
 Heather MacKenzie (Orem)  
 Rodney "Butch" Dailey (Salt Lake City)

#### **Appraiser Licensing and Certification Board Members**

Craig Morley (St. George), Chair  
 Lynn N. Christensen (Layton), Vice Chair  
 Holly J. Christensen (Provo)  
 Ronald M. Smith (Salt Lake City)  
 Ambria L. Spencer (South Jordan)