

Utah! DIVISION of REAL ESTATE NEWS

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

Jon M. Huntsman, Jr., Governor • Francine A. Giani, Executive Director • Derek B. Miller, Division Director

APRIL 2006

Volume 1 -- Number 2

NEW Postcard License Renewal Notification

February marked a change in the way real estate sales agents, associate brokers, and mortgage licensees receive notice of upcoming license renewals. Postcard notification provides detailed information about how licensees can renew their licenses online. The postcard also informs renewal candidates that if they are not able to renew online, how they can download, complete, and submit the required paperwork and renewal fee to the Division by their license expiration date. Please note: this is the only notification sent by the Division to a licensee that their license is due to renew.

Remember, the division mails license renewals only to the address you have designated as your mailing address. Check the licensee database on our website to confirm that your address is accurately recorded with the Division (<http://realestate.utah.gov/database.html>). If you need to make an address change, download a change card at <http://realestate.utah.gov/applications.html>, complete and submit your correct address to the Division either by mail (P.O. Box 146711, Salt Lake City, UT 84114-6711), or fax (801) 530-6279.

Please be aware that it can take weeks to process a paper license renewal form and receive the new license in the mail. With online renewal such delays do not occur! Unnecessary delays can be avoided by following the instructions on the postcard renewal notice and renewing your license online.

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Caravan 2006

Phase I – Central, Southeastern and Southern Utah

Director Derek Miller and several Division staff members recently returned from meeting licensees in Price, Moab, and St. George. This caravan was the first for Director Miller although the Division has been conducting them for a number of years. In addition to information and updates regarding the real estate, mortgage, and appraisal industries, each meeting had a thorough question and answer session.

Turnout at these sessions dramatically exceeded previous Division Caravan attendance. In St. George, the overwhelming and unexpected turnout meant that many licensees were not able to get a seat. Although the auditorium had a capacity of just under 200, almost that many were turned away (with the promise that the Division would return for an "encore" performance on April 20th).

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From the Director's Desk



Derek B. Miller

In the previous newsletter I shared with you my informal mission statement for the Division: “making things as easy as possible for the good guys and as difficult as possible for the bad guys”. In that article I outlined some of the things the Division is doing to accomplish that first goal, including allowing faxed change cards, improving online renewal, and streamlining the sanctions process. I am pleased to report that we continue to make progress on those fronts. I also want to let you know about some new improvements that are on the horizon. Those include allowing Principal Brokers and Appraisers to renew their licenses online. The Division is also looking at how we can expedite investigation cases from initial screenings through resolution. The most significant (in my opinion) improvement we are working on is “Online License Management”. This will allow individual licenses to access, view, and update personal license information such as your address, license status, and company affiliation. It will also allow Principal Brokers and PLM’s to manage their current roster of licensees, with information for each licensee such as renewal dates, license history, and current status. This improvement is in the planning stages, but once implemented it will be a huge advantage to both the industry and the Division.

I also want to address the second goal of the mission statement and how together we can be tough on the bad actors. Let me start by sharing a memorable experience from the recent legislative session. I was sitting in one of the hearing rooms, waiting to testify on a particular bill, listening to the dialogue between the person testifying on behalf of a regulatory office and the various representatives of the regulated industries. What caught my attention was the expressions of mutual respect and appreciation. This exchange caused me to wonder how the relationship between that industry and regulator had evolved and to contemplate whether the Division of Real Estate shared the same relationship with the industries it regulates.

The connection between this experience and “making things difficult for the bad guys” is the simple fact that fighting fraud takes an active public-private partnership between the Division and the real estate, mortgage, and appraisal industries. Over the past six months I have been pleased to see that this

kind of partnership does exist. The question is, “What we can do to make it stronger?”

The first thing we must do is realize that we share the same goal in the fight against fraud. Inevitably, there will be honest disagreements over how to accomplish that goal, but that is natural, and a sign of a healthy partnership. In fact, I believe that working through occasional differences strengthens our partnership and ability to accomplish our common goal.

The purpose of government regulation is to maintain a level playing field for practitioners and to protect the public. The question is one of *balance*; the line between “hassling a customer” with bureaucratic red tape and “weeding out the crooks” by applying appropriate statutes and regulations. At the Division, we walk that line everyday and as we attempt to maintain the proper balance, here is what you can expect from us: First and foremost you can expect to be treated with respect and professionalism. We are working hard to continually increase our level of customer service. This is one reason we are trying to automate processes like renewals and change cards – so the staff can spend time in areas that require a personal touch, such as taking your calls and answering your questions. You can also expect the Division to thoroughly screen all complaints and open investigations where appropriate. Our Enforcement staff will continue to investigate all cases to the suitable conclusion; be that exonerating a falsely accused licensee or sanctioning someone for misconduct.

In the spirit of strengthening our public-private partnership, there are some things that I hope the Division can expect from each of you as members of your respective industries. First, I hope you have a personal goal to maintain the highest standard of ethics and professionalism. Too often our investigators see cases where a licensee tried to “walk as close to the edge as possible”, believing erroneously that they were on firm ground when in truth they had long since fallen off the cliff. I also encourage you to join and be active in your professional organizations and associations. It is an excellent way to advance your profession while improving your own professionalism. Lastly, I hope you will avoid the all-too-easy inclination to sit on the sidelines in the fight against fraud. The reality is that each of you knows better than anyone else what is going on in your industry—both the good and the bad. I invite

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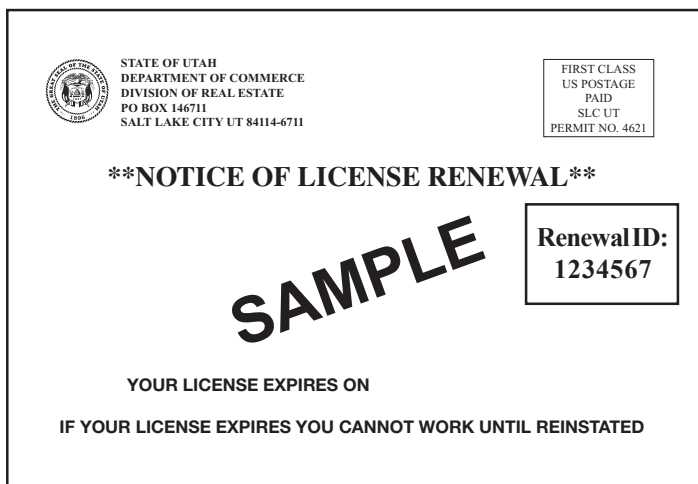
you to take an active stand against the misconduct you may witness by contacting the Division (through the complaint hotline at 801-530-6356) or your association. Working together is the way – I believe the *only* way – we can effectively fight fraud in our state.

Postcard Renewal

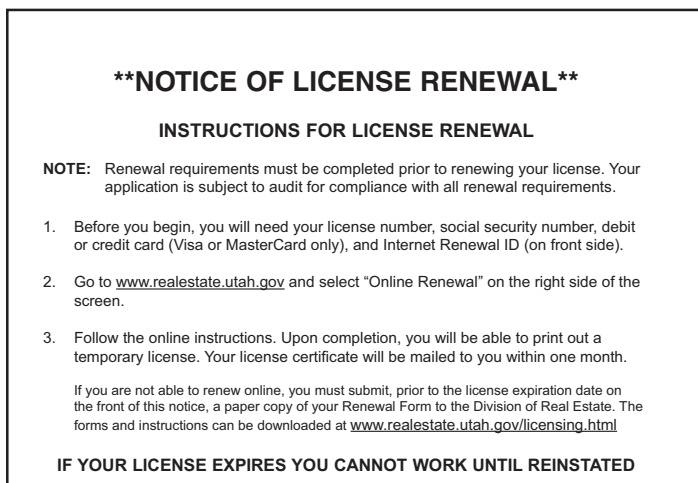
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Watch for your postcard renewal notice in the mail approximately six weeks before your license expiration date. A sample of the postcard renewal notification is represented below:

FRONT



BACK



What? My License Has Expired?!

Take this simple test. Without checking (no fair cheating!), write down on a piece of paper the expiration date of your license. Now, pull out your wallet or purse and find your “pocket” license (or locate the copy of the “wall” license we mailed you at the time of your license issuance or last license renewal. It might be nicely framed and placed on a wall below a lovely/handsome 8” x 12” photo of you, at your office). If you have lost all copies of the license we mailed you, do not despair! You may go to our website at <http://realestate.utah.gov/database.html> and verify this information on our licensee database. Now, check to see whether the date you *think* your license expires, is the same date that your license *actually does* expire (don't forget to check the year!). For many people the date they *think* their license expires is actually *different* from their actual license expiration date.

The Division occasionally receives telephone calls from confused individuals with expired licenses. Expressions of disbelief and disappointment often turn to frustration and/or anger when they realize the consequences for allowing their license to lapse. “I never received my renewal notification in the mail,” or “My broker (or former company) was supposed to send in my change card which included my new mailing address,” or; “I had a health issue that prevented me from acting on my license renewal at that time,” etc. Each of these situations (although heartfelt) does not relieve the individual from their responsibility to renew their professional license.

Those who neglect to ensure that their license is renewed “on time” face additional consequences. Once a license has expired, former licensees are faced with having to pay renewal fees, late fees, submit a change card and the accompanying fee, and if their license has been expired for over 30 days, reinstatement fees and additional reinstatement education (12 hours for both real estate and mortgage licensees - in addition to the required continuing education for active licensee renewals).

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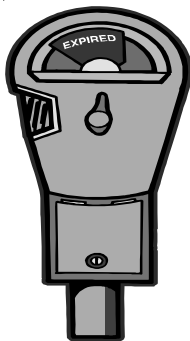
My License Expired?

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These delays and expenses could easily be avoided if licensees would take upon themselves the responsibility to keep track of the expiration date of their license. After initial or license renewal processing, each individual licensee is printed a license (including a smaller version of their license to be kept in your billfold or purse). This license clearly states your name, license number, and license expiration date. It is your responsibility to keep track of when your license expires and perform the necessary steps to renew your license.

Remember, if you have misplaced your license you can verify your license expiration by looking on the Division's website at <http://realestate.utah.gov/database.html>. Please know your license expiration date because the licensee bears the sole responsibility to renew their license in a timely manner.

The Division currently mails out a single postcard renewal reminder (appraisers continue to receive paper renewal instructions and forms until they can renew online within the next few months), yet this courtesy is merely an aid to help you to remember to renew your license. Ultimately licensees are responsible to renew their licenses "on-time."



"Which Comes First... Education Or Education Waiver?"

Why don't Principal Lending Manager candidates take the required education before they apply for approval from the Division? The answer to that question is relatively simple. The Division (and the candidate) does not know the amount of education (if any) that a candidate needs to become a PLM, until *after* they submit their PLM Experience Documentation Form for review. Only then will the Division be able to determine whether an applicant qualifies under the five or three year experience qualification criteria.

If candidates proceed to take education before they receive an education waiver, they may be taking too much education, or they may ultimately not qualify at all to become a PLM. In this case they would have taken education unnecessarily because they do not qualify to advance to a PLM.

In order to avoid candidate frustrations and confusion, Mortgage Pre-licensing schools have been cautioned *not* to allow students to take the PLM education until after the Division has issued them an education waiver. Logic dictates that it makes no sense to "get the cart before the horse" when it comes to receiving PLM education before the amount of education, if any has been determined.

Some frustrations have been expressed by candidates when the Division notifies them that they only qualify to become a PLM under the three year qualification option (which requires 40 hours of pre-license education, passing both the national and state portions of the exam), when they *believed* that they qualified under the five year option (where passing the state portion of the exam, is the only requirement).

From the PLM Experience Documentation Form alone, the Division will determine the applicant's qualifications to become a PLM. The application will either be denied or approved based on the information provided by the applicant. An applicant would be well advised to list all qualified work experience on their PLM application form in order to assure the most probable likelihood of ultimate approval. The Division discourages applicants from applying, being denied or approved under a "reduced" experience level qualification, and then seeking to re-apply with additional experience documentation. One's initial application should be inclusive of all qualified work experience. Multiple applications with incrementally increasing experience documentation will only delay the applicant and result in anxiety and frustration by the licensee.

Over 1,200 individuals have received a written notification from the Division regarding their application to become a PLM or ALM. These notifications indicate

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Advertising Requirements When Selling Real Estate Licensee-Owned Properties

Property Listed by Real Estate Licensee (Property Owner) or, Property Owned by Real Estate Licensee but Listed by Another Licensee

If selling a listed property that is personally owned by a licensee, any advertising must include the name of the brokerage (of the listing agent), as shown on Division records.

R162-6.1.5.1 – “Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited...”

A sign “rider” declaring “owner/agent” is not required. However, the licensee’s ownership interest in the transaction must be disclosed in the real estate purchase contract.



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.”

Property For Sale By Owner Agent (Unlisted)

If selling a personally owned property that is not listed, any advertising must include the phrase “owner-agent” or the phrase “owner-broker”.

R162-6.1.5.2 – “If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase “owner-agent” or the phrase “owner-broker”.

An important reminder: The purchase contract must include the licensee’s true position as principal in the transaction regardless of whether the property is listed with a real estate brokerage or sold “for sale by owner” (R162-6.1.3).

Did you know?

The Division often receives continuing education certificates and other documentation for licensees that do not reflect the person's legal name. While you might go by Jack if your name is John, it helps our staff avoid confusion if you use your legal name on all of your correspondence with the Division. We appreciate your efforts to help us do our jobs better!

Utah! DIVISION of REAL ESTATE NEWS

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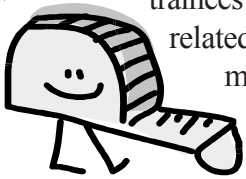
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Appraiser Trainee Supervision

The Division occasionally learns of situations where registered trainees are performing appraisal duties that exceed their experience and licensed authority. Please refer to Administrative Rule R162-105-3.2 for specific duties that may be performed by registered trainees.



“Only those persons who have properly qualified as trainees... may perform the following appraisal related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. **The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities**”.

Trainees are not able to solicit appraisal business in their own name, but only in the name of the firm or in the name of the appraiser that is directly supervising them. All engagement letters shall be addressed to the supervisor or the supervisor’s appraisal firm, not to the trainee.

Administrative Rule R162-105-3.2.1 further indicates, “in all appraisal assignments, the supervisor shall delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties”.

Although currently there are no restrictions on the number of trainees that an appraiser may supervise, soon the number of trainees will be restricted.

In compliance with national standards determined by the Appraisal Qualifications Board effective January 1, 2008, a supervising appraiser may supervise a maximum of three trainees at a time (R162-105.3.4). Until then, supervisors continue to have direct responsibility for the trainees affiliated with them, regardless of the number.

PLM Licensing Where Are We? (The Numbers Don’t Lie)

Despite legislation that passed over two years ago, and repeated communication, only **168** Principal Lending Managers (PLM’s), have become licensed as of the end of March 2006. With only one month remaining before the legislatively imposed deadline, the Division is concerned with the low response to this legal requirement, as there are 1,766 actively licensed mortgage entities that require a PLM.

Utah Code 61-2c-201 (5), (8) and (11) state that:

“On or after May 1, 2006, a mortgage officer shall conduct all business of residential mortgage loans:

- (a) through the principal lending manager with which the individual is licensed; and
- (b) in the business name under which the principal lending manager is authorized by the division to do business.”

“On or after May 1, 2006, a mortgage officer whose license has been placed in inactive status may not transact the business of residential mortgage loans until the mortgage officer has licensed with a principal lending manager...”

Over 1,300 education waivers have been granted to PLM candidates. However, to date, only 330 PLM individuals are scheduled to take the exam over the next 30 days. As the May 1st deadline approaches, the Division strongly encourages all licensed mortgage entities to quickly complete the requirements to have a legally licensed Principal Lending Manager.

Caravan 2006

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This session was also a success and thankfully all who reserved a seat were admitted.



(Phase II – Northern Utah)

The second phase of the Division's 2006 Caravan will begin with a meeting in Logan on Tuesday, May 2nd. This will be followed by a meeting in Tooele on Thursday, May 4th. On Tuesday, May 16th the Division will be in Utah County, and on Thursday, May 18th the Caravan will travel to Vernal. Watch your mail for further details if you live in or adjacent to a county where the Caravan will be visiting.

Appraiser Issues

by Jon Brown, Enforcement Director

Issue #1

Real estate licensees are calling the Division of Real Estate complaining about appraisers who are pulling three comparables and telling lenders they cannot reach a value needed to complete a transaction. You may think this is a good service to your client, but you cannot do a letter report or a verbal conclusion as to what a value could be without following Standard 1 and 2 of USPAP. If you are offering this type of service, STOP! USPAP requires you to go through the process and do the report. Common sense should tell you that you cannot do an "eyeball" type of report. You have completed an appraisal if you say a property

cannot reach a certain value. If the Division of Real Estate uncovers that this has happened, there will be a complete investigation and if USPAP violations are found, there will be action taken against the licensee.

Issue #2

Administrative Rule 107.1.5 says in part, that it is unprofessional conduct for a supervisor to allow a non-appraiser to (c) "accept an appraisal assignment." Rule 107.6 says in part, that trainees may not be paid by the client, but that the supervisor or supervisor's firm must collect the fee for an appraisal service and that the trainee must be paid by the supervisor. The Division will take action against the supervisor, if an investigation finds the above rules have been violated.

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Education Or Education Waiver?

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in some instances whether an individual is denied based on inadequate experience. In the vast majority of cases, the applicants are approved to proceed in the licensing process to become a PLM.

Some are approved under the “three year” experience standard. Others are approved under the “five year” experience requirement (for further information on these two approval options see the January 2006 edition of the Utah Division of Real Estate News at <http://realestate.utah.gov/newsletter.html>).

Included with the personal letter of notification, applicants are provided a

“Mortgage Candidate Education Certifying Document.” This document is stamped and signed by the Division of Real Estate (if the 40 hour education is waived); or, by an approved mortgage pre-licensing school (once the 40 hour education is completed).

The bottom left portion of the “Mortgage Candidate Education Certifying Document” indicates the date in which this document “expires”. Since Associate Lending Managers are not required to be licensed by May 1, 2006, they can complete their licensing, up until the expiration of the certifying document (one year from approval by

the Division or completion of mortgage pre-licensing education).



The education “waiver expiration date” refers only to the date at which time the “Mortgage Candidate Education Certifying Document” expires. **In no way does it waive the requirement for entities to have an actively licensed PLM by the 5/1/06 deadline.** Individuals who are required to become a PLM to comply with the statutory requirement must complete the licensing process by the 5/1/06 deadline!

Confirmation of Agency Disclosure

Paragraph five of the real estate purchase contract (REPC) is titled “CONFIRMATION OF AGENCY DISCLOSURE”.

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this Contract:

[] Seller’s Initials [] Buyer’s Initials

The Listing Agent, _____, represents [] Seller [] Buyer [] both Buyer and Seller as a Limited Agent;
The Listing Broker, _____, represents [] Seller [] Buyer [] both Buyer and Seller as a Limited Agent;
The Selling Agent, _____, represents [] Seller [] Buyer [] both Buyer and Seller as a Limited Agent;
The Selling Broker, _____, represents [] Seller [] Buyer [] both Buyer and Seller as a Limited Agent;

This paragraph includes space to list the names of the listing and selling agents for a transaction. Space is also provided to include the listing and selling brokers names. The brokers’ space is to be completed with the name of the principal broker of the real estate brokerage representing either or both the buyer or seller in the transaction. This space is NOT to be filled in with the name of the listing or selling brokerage. The agency relationship is established between the principal broker and his/her principal in the transaction (buyers and/or sellers). Therefore the name of a branch broker or a company name should not be entered in the space provided for the “broker” in the confirmation of agency disclosure section of the REPC.

When Can a New Licensee Begin to Conduct Business?

Each day the Division receives a number of inquiries about when an individual that has applied for a new license may begin conducting business. There are a large number of misconceptions and confusion on this issue. Which of the following is correct regarding when an individual may begin to use their license. When they:

- a) take and pass the exam
- b) pass the exam and apply to the Division
- c) apply to the Division (the date stamp on the receipt serves as their temporary license)
- d) call the Division and are issued a license number before their printed license arrives in the mail
- e) receive their printed license in the mail

The answer to this quiz is answer “e”. Only when an individual has received their original license in the mail from the Division may they conduct licensed activities.

When Can a Renewing Licensee Begin to Conduct Business After Their License has Expired?

The answer to this question is the same answer to the quiz above, “when they receive their printed license in the mail.” The exception to this answer is for those who renew their license on-line; they are able to immediately print their “temporary” license, which is valid until their Division printed license arrives.

“Active” vs. “Inactive”

Any individual is required to have an “active” valid license to perform activities that require a mortgage, real estate, or appraisal license. Renewing an “inactive” license (real estate and mortgage) does **not** enable an individual to act in a licensed capacity. An inactive licensee may not perform licensed activity.

Appraiser Issues

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Issue #3

Appraisal reports that list trainees as participating in the report, must also state what services the trainee rendered. When a trainee submits an application to become a Licensed Appraiser, they are required to obtain certain experience levels. The reports he submits must be USPAP compliant. If the level of his participation is not in the report, the experience is disqualified and the application is denied. Do it the right way!

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.

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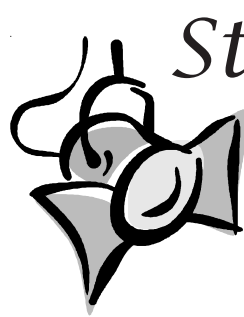
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Staff Spotlight

*Real Estate
Licensing Specialist
Celia Corey*

The Division is excited to introduce our new real estate licensing specialist, Celia Corey. Celia joined the Division in February 2006 after a “25 year detour” from the real estate and mortgage industry. In the late 1970’s she worked for a local bank as a teller and a loan processor, and for a Savings and Loan institution processing mortgage loans and assisting with the secondary marketing of those loans.

“During the ‘detour’ years, my husband of 29 years, Doug and I raised two children, Gerald and Alisa,” Celia shares. She says, “I am happy to return to the real estate and mortgage industry.”

Her responsibilities at the Division currently include processing real estate reciprocal license applications, processing real estate change cards, and fielding questions from real estate licensees (via phone calls and e-mail - ccorey@utah.gov). In her short time here she has already realized that “the workload that is processed through this Division is impressive.”

Celia’s advice to licensees is to:

1. Memorize the expiration date of your license.
2. Complete your CE requirements 30 days prior to that date.
3. Utilize our website (www.realestate.utah.gov) for information, forms, and license renewal.

New Appraisal Pressure Survey in the Works

(Richfield, Ohio)–October Research Corp. has announced it is conducting a follow-up survey on whether appraisers are being pressured to restate home values to help make deals go through. It expects to publish results this Spring.

In 2003, the company’s survey found that more than 55 percent of professional appraisers felt they had been pressured to inflate property values. Over 25 percent of the appraisers surveyed said they felt pressure on at least half of their orders.

The survey was seen as a condemnation of practices by lenders, mortgage brokers and real estate agents who are anxious to make deals go through.

Reprinted from the [Real Estate Intelligence Report](#) 02/27/06.

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