

Utah Division of Real Estate

NEWSLETTER

2019
SECOND QUARTER

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National Do Not Call Registry

The issue of Division of Real Estate Licenses cold-calling to find potential clients was first brought to my attention earlier this year when a Utah legislator informed me that he had just received a telephone call from a Utah real estate agent asking if he was interested in selling his home. There are two potential problems with this telephone call. First, the agent did not identify herself as a licensee. Second, this Legislator was on the National Do Not Call Registry, so he should not have received this telephone call. I notified the Utah Association of Realtors® of the concern, and they posted important information to their members on their Facebook page

about the National Do Not Call Registry. I didn't hear much more about this issue until the Division received the following email on April 11, 2019:

It is time that the Realtor Board reminds member realtors that there is a Federal Do-Not-Call List and that by making unsolicited calls offering their services, violates federal regulations and subjects them to fines.

I have received several of these unsolicited calls from several different realtors. Until now, I have been informing them of the Federal Do Not Call List and the ramifications of violation. I will not do that anymore. From here out, I will take legal action if called.

Your assistance in educating realtors with regard to the laws and regulations regarding the Federal Do Not Call List would be appreciated, and may save the realtors a lot of money.

Utah Law

The first thing for licensees to understand is that unless exempt, engaging in telephone solicitation in the State of Utah requires registration with the Division of Consumer Protection. According to the Telephone Fraud Prevention Act, 13-26-4, those exempt from registration include:

(Continued on page 2)



Jonathan Stewart

**NATIONAL DO NOT
CALL REGISTRY (CONT.)**

“a broker, agent, dealer, or sales professional licensed under the licensure laws of this state, when soliciting sales within the scope of his license.” It is important to understand that the telephone solicitation must be made within the scope of the license. If you are calling to be personally involved as a buyer or seller, the Division of Consumer Protection could view this as outside the scope of your license. In this case, you would need to be registered with the Division of Consumer Protection. In addition, Real Estate Administrative Rule R162-2f-401a (5) – Affirmative Duties Required of All Licensed Individuals states: when making an offer or solicitation to buy, sell, lease or rent real property as a principal, either directly or indirectly, or as an agent for a client, a licensee shall disclose in the initial contact with the other party the fact that the licensee holds a license with the division, whether the license status is active or inactive...All licensed real estate agents and brokers must disclose in their initial contact that they are licensed. The licensee who called a legislator did not disclose she was a licensed real estate agent until after the legislator asked.

Only licensed real estate agents are allowed to make cold calls soliciting for business:

R162-2f-401g. Use of Personal Assistants

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

(2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:

(a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;

(b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;

(c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or

completion of forms or documents;

(d) placing brokerage signs on listed properties;

(e) having keys made for listed properties; and

(f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;

4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

Federal Law

Although licensees are exempt from registration with the Division of Consumer Protection, they are still required to follow laws pertaining to the Federal Do Not Call Registry, which means that you cannot call a telephone number on the registry. If cold-calling potential clients, the law requires you to check the Do Not Call Registry once every 31 days. There are two exceptions to this rule. First, you may call someone that you have an existing business relationship with. According to the FTC, the business relationship exception is as follows:

(Continued on page 3)

**NATIONAL DO NOT
CALL REGISTRY (CONT.)**

A company with which a consumer has an established business relationship may call for up to 18 months after the consumer's last purchase or last delivery, or last payment, unless the consumer asks the company not to call again. In that case, the company must honor the request not to call.

The second exception applies to family members, friends, or acquaintances. If you are calling a family member, friend, or

acquaintance, you are not required to check the Do Not Call Registry, but if one of them requests for you to not call them again, you must honor that request.

Please be mindful when soliciting potential clients or asking for referrals. If you are going to cold-call potential buyers or sellers, expired listings, or call past clients, please be sure to adhere to the Federal Do Not Call Registry laws. A violation of the Do Not Call

Registry can result in fines of up to \$41,484 per telephone call. I recommend reading this Q&A section for solicitors put out by the FTC: <https://www.ftc.gov/tips-advice/business-center/guidance/qa-telemarketers-sellers-about-dnc-provisions-tsr>

If you are a prelicense instructor or CE Instructor, please educate your students on the importance of following Federal Law.

RULE DEVELOPMENTS SINCE MARCH 1, 2019

To view and comment on any proposed or amended rules during the public comment period, please visit the Utah State Bulletin at

<http://www.rules.utah.gov/publicat/bulletin.htm>

Appraisal Management Company

There are no recently adopted or proposed rule amendments under consideration for the appraisal management company rules.

Appraisal

The Real Estate Appraiser Licensing and Certification Board and the Division recently approved for filing a proposed rule amendment which would allow for the performance of evaluations by an appraiser. Under the proposed rule amend-

ment the appraiser would be exempt from complying with Standards 1 through 3 of USPAP when performing an evaluation. The appraiser would not receive experience hours for the performance of evaluations.

The proposed rule amendment would also clarify the requirement that a school or continuing education provider upload course completion information within 10 days after a course is completed to the database specified by the Division for each student who completes the course.

The proposed rule amendment is being prepared for filing. After it is filed, there will be a public comment period for anyone wanting to comment on the proposed rule amendment. On June 26th the Ap-

praiser Board voted to file the rule amendment and to seek public comment.

Mortgage

The Division has approved the filing of a proposal to amend the Utah Residential Mortgage Practices and Licensing Rules by including the post licensing CE course for new mortgage loan originators to applicants applying for reinstatement of their license. The rule was previously amended in 2017 to require the post licensing course for new licensees applying to renew their license. If the proposed rule becomes effective, it would extend the requirement to complete the post licensing CE course to reinstatement appli-

(Continued on page 4)

RULE DEVELOPMENTS (CONT.)

cants. This requirement is in response to the replacement of the Utah specific test by the Uniform State Test. Please look to the next quarterly newsletter for more information.

Real Estate

On April 11, 2019, the Division

filed a proposal to amend the Real Estate administrative rules by adding a mandatory three-hour CE course. The proposal would not add additional hours of continuing education for renewal but the required course would satisfy three hours of core course hours required under the current rule.

The public comment period for the proposed rule amendment ended May 31, 2019. Please look to the next quarterly newsletter for more information. On June 19th, the Real Estate Commission voted to make this rule amendment effective.

Attention: Mortgage Loan Originators Who were initially licensed or relicensed in 2018

Mortgage loan originators who were either initially licensed or relicensed in Utah between 01/01/2018 to 12/31/2018 are required to complete the 5-Hour Utah MLO CE Course by October 21, 2019, to renew their license for 2020, when the renewal period commences on November 1st.

There are 834 MLOs that received their initial license or who were relicensed in Utah between 01/01/2018 and 12/31/18. Each of these 834 MLOs are required to complete the new 5-hour Utah MLO Course by October 21, 2019 before they can request to renew their mortgage license in November for 2020. The 834 MLOs who need to complete the new Utah MLO Course can verify course completion through their education record in their NMLS account.

— RAP Back Misconceptions —

Over the last few months we have heard about a couple misconceptions floating around about RAP Back. Both of the misconceptions in this article deal with some of the first questions we asked the Bureau of Criminal Identification (BCI) when we were exploring RAP Back. The information in this article comes directly from BCI.

1. I am already enrolled in RAP Back because I am a teacher or I have a concealed weapons permit so I don't have to enroll for my license(s) with the Division of Real Estate.

Background checks can only be used for the original intended purpose and this is based on state law and the FBI. A school teacher's background check cannot be transferred to their real estate license.

2. I am a real estate agent and an appraiser, but I only have to submit one set of fingerprints and it will work for both licenses.

The same answer as above applies to those old multiple licenses. We have been told by BCI that for each license type the licensee must submit a separate set of fingerprints.

The Division understands the frustration of having to be re-fingerprinted for both your real estate and/or appraisal licenses. We recognize the sacrifice of time and treasure to implement this fingerprinting requirement and hope you understand the value this will provide to your industry and the public.



Appraisal Subcommittee Compliance Review of Division Appraisal Program

The Appraisal Subcommittee (ASC) was created to oversee the real estate appraisal process as it relates to federally related transactions as defined in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Title XI's purpose is to "provide that Federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals are performed in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision."

The ASC is required to monitor all states for compliance. The ASC issues Policy Statements to provide States with the necessary information to maintain their Programs in compliance with Title XI. Policy Statements 1 through 7 correspond with the categories that are evaluated during the Compliance Review process and included in the ASC Compliance Review Report. The ASC performed a Compliance Review of The Utah Division of Real Estate's Appraisal and

ASC Finding	Rating Criteria	Review Cycle (Program history or nature of deficiency may warrant a more accelerated Review Cycle).
Excellent	<ul style="list-style-type: none"> • State meets all Title XI mandates and complies with requirements of ASC Policy Statements • State maintains a strong regulatory Program. • Very low risk of Program failure. 	Two-year
Good	<ul style="list-style-type: none"> • State meets majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements. • Deficiencies are minor in nature. • State is adequately addressing deficiencies identified and correcting them in the normal course of business. • State maintains effective regulatory Program. • Low risk of Program failure. 	Two-year
Needs Improvement	<ul style="list-style-type: none"> • State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program. • State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies. • State regulatory Program needs improvement. • Moderate risk of Program failure. 	Two-year With Additional Monitoring
Not Satisfactory	<ul style="list-style-type: none"> • State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program. • State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing. • Stage regulatory Program has substantial deficiencies. • Substantial risk of Program failure. 	One-year
Poor	<ul style="list-style-type: none"> • State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements. • Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program. • State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies. • High risk of Program failure. 	Continuous Monitoring

Appraisal Program

The Appraisal Program received a rating of Good.

Policy Statement 1 (Statutes, Regulations, Policies and Procedures Governing State Programs)

⇒ In compliance

Policy Statement 2 (Temporary Practice)

⇒ In compliance

Policy Statement 3 (National Registry)

⇒ Area of concern. States are required to submit all disciplinary action to the National Registry. On one occasion, the Division failed to timely upload a disciplinary action to the National Registry.

Policy Statement 4 (Application Process)

⇒ In compliance

Policy Statement 5 (Reciprocity)

⇒ In compliance

Policy Statement 6 (Education)

⇒ In compliance

Policy Statement 7 (State Agency Enforcement)

⇒ In compliance

Appraisal Management Company Program

Appraisal Management Company Program received a rating of Good

Policy Statement 8 (Statutes, Policies and Procedures Governing State AMC Program)

⇒ Area of Concern. The Appraisal Subcommittee (“ASC”) found a small error in our statutes that will be corrected during the next legislative session. In the Division’s defense, in July 2017, the Division gave the ASC a draft of legislative changes, which included their noted error, and asked them for feedback. The Division never received feedback from the ASC about our draft.

Policy Statement 9 (National Registry)

⇒ In compliance

Policy Statement 10 (State Agency Enforcement)

⇒ In compliance

Although the ASC found that the Division had two areas of concern, our overall rating was “Good” for both our Appraisal Program and our Appraisal Management Program.

SECOND QUARTER LICENSING and DISCIPLINARY ACTIONS

Please note that Utah law allows 30 days for appeal of an order. Some of the actions below might be subject to this appeal right

APPRAISAL

Appraisal Institute, Pre-license School, Chicago, Illinois. Utah Administrative Code Section R162-2g-502a requires that a school upload to the database specified by the Division course completion information for continuing education courses within ten days after the end of a course offering. In its investigation of a complaint by a student who had completed a few courses offered by Appraisal Institute, the Division noted significant delays of 14, 6, and 20 months by the Appraisal Institute in uploading course completion information and concluded that Appraisal Institute had violated Section 502a. In mitigation, the student did not indicate when he signed up for the courses that he wanted credit in Utah for the continuing education. In a stipulated order dated May 22, 2019, the Appraisal Institute agreed to pay a fee of \$1,500. Case number AP-19-107848 and Docket Number AP-2019-001

MORTGAGE

DUBOIS, RYAN KENNETH, mortgage loan originator, Lehi, Utah. In an order dated May 15, 2019, Mr. Dubois's application for licensure was granted and his license placed on

probation for the initial licensing period due to a pending criminal charge. Case number MG-19-109893

FIRPO, FRANCO A., mortgage loan originator, Draper, Utah. In an order dated March 11, 2019, Mr. Firpo's application for licensure was granted and his license placed on probation for the initial licensing period due to criminal history. Case number MG-19-108204

LIBERTY ONE MORTGAGE, unlicensed entity, Los Angeles and Sherman Oaks, California. In an order dated April 4, 2019, Liberty One Mortgage was found to have committed five violations of Utah law or its administrative rules including: transacting the business of residential mortgage loans without a license; charging a fee in connection with a residential mortgage transaction without providing the loan applicant a written statement signed by the applicant; failing to account for money received in connection with residential mortgage loan; using money for a different purpose from the purpose for which the

money was received; and failing to remit fees collected on behalf of a third party service provider. Liberty One Mortgage was assessed a civil penalty in total the amount of \$25,000 and ordered to cease and desist from transacting the business of residential mortgage loans until it is licensed pursuant to Utah law. Case number MG-15-75913 and Docket No. MG-2018-011

REID, KENNETH, JR. mortgage loan originator, Phoenix, Arizona. In an order dated May 14, 2019, Mr. Reid's application for licensure was granted and his license placed on probation for the initial licensing period due to a child support arrearage. Case number MG-19-109851

ZEOLLA, MATTHEW RONALD, mortgage loan originator, Fraser, Michigan. In an order dated April 25, 2019, Mr. Zeolla's license was granted and placed on probation for the initial licensing period due to criminal history. Case number MG-19-109420

REAL ESTATE

ALLEN, DARCI, sales agent, Sandy, Utah. In an order dated March 5, 2019, Ms. Allen's license was renewed and placed on probation for

(Continued on page 8)

LICENSING AND DISCIPLINARY ACTIONS (CONT.)

the renewal period due to criminal history. Case number RE-107983

BABB, BRIAN, sales agent, Sandy, Utah. On February 25, 2019, the Division issued a citation to Mr. Babb for failing to identify his brokerage information on a website advertisement and on a social media advertisement. The citation assessed a fine in the amount of \$150. Mr. Babb paid the fine. Citation # DREC-19-6 and case number RE-18-105272

BAKER, DAVID BRYCE, sales agent, Draper, Utah. In a stipulated order dated March 20, 2019, Mr. Baker acknowledged that he was a senior manager and employee of a publicly-traded company that owned, managed, and leased real estate. While conducting property sales, leasing, and management transactions for the company, Mr. Baker failed to disclose that he was licensed as a real estate sales agent. He also failed to disclose that as a shareholder of the property owner, he was a principal in the transactions. These disclosures are required by Utah administrative rules. Mr. Baker agreed to pay a civil penalty of \$1,500 and to complete three hours of continuing education on the topic of Utah law in addition to the continuing education required for his next

license renewal. Case number RE-16-87379

BARNES, STEFANIE, associate broker, Riverton, Utah. In an order dated March 7, 2019, Ms. Barnes's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-108094

BELGIQUE, JON RAPHAEL, sales agent, Salt Lake City, Utah. In an order dated April 15, 2019, Mr. Belgique's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-19-109149

BUTTERFIELD, CHRIS, principal broker, Salt Lake City, Utah. In an order dated March 27, 2019, Mr. Butterfield's license was renewed and placed on probation due to a pending criminal matter. Case number RE-19-108693

CARTER, JACE CAREY, sales agent, Mapleton, Utah. In an order dated March 29, 2019, Mr. Carter's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-19-108787

CLUB LESPRI, LLC, unlicensed entity, Park City, Utah. In a stipulated order dated March 20, 2019, Club Lespri, LLC admitted to providing property management services for a long-term rental agreement without a real estate license, in violation of Utah law and administrative rules. Club Lespri, LLC agreed to

cease and desist from engaging in conduct that requires registration with the Division of Real Estate until it is registered or is exempt from registration. Case number RE-15-76779 and docket number RE-2018-045

DAVIS, TRAKELL, sales agent, Orem, Utah. In an order dated May 8, 2019, Ms. Davis's license was reinstated and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-109701

GARCIA, ANGEL L., JR., sales agent, Hooper, Utah. In an order dated March 26, 2019, Mr. Garcia's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-108681

GHANEM, AHMED ABDEL, sales agent, Salt Lake City, Utah. In an order dated April 5, 2019, Mr. Ghanem's license was renewed and placed on probation for the renewal period due to a plea in abeyance agreement in a criminal matter and due to the investigation of a reporting issue at the pharmacy where Mr. Ghanem was employed as a pharmacist. Case number RE-19-108939

GORDON, JOSEPH T., sales agent, South Jordan, Utah. In an order dated March 7, 2019, Mr. Gordon's license was renewed and placed on probation for the renewal period due to criminal conduct during the

(Continued on page 9)

LICENSING AND DISCIPLINARY ACTIONS (CONT.)

past licensing period. Case number RE-19-108098

HARPER, BRAD, sales agent, West Valley City, Utah. In a stipulated order dated March 20, 2019, Mr. Harper admitted that he had continued to advertise real estate and actively assist buyers and sellers after his license had expired. He closed a number of transactions during this unlicensed period. Mr. Harper agreed to pay a civil penalty of \$5,000 and to complete six hours of continuing education in addition to the continuing education required for his next license renewal. Case numbers RE-15-77786, RE-16-87250, and RE-16-87726

HART, DONALD T., sales agent, Park City, Utah. In an order dated March 29, 2019, Mr. Hart's license was granted and placed on probation for the initial licensing period due to criminal history and a pending criminal charge. Case number RE-19-110217

HESLOP, MICHAEL DAVID, sales agent, Centerville, Utah. In a stipulated order dated March 20, 2019, Mr. Heslop admitted that he placed an advertisement listing a property for sale without a written agency agreement with the property owners and without including his brokerage information in the advertisement. His actions were in violation of Utah law and administrative rules. Mr. Heslop agreed to pay a civil penalty of \$650 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-18-105300

HILTON, MICHAEL SHAUN, sales agent, Cottonwood Heights, Utah. In an order dated March 7, 2019, Mr. Hilton's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-108099

HOWELL, ETHAN DANIEL, Bluffdale, Utah. In an order dated May 28, 2019, Mr. Howell's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-110186

KERSWELL, CLARK T., sales agent, American Fork, Utah. In an order dated May 21, 2019, Mr. Kerswell's license was renewed and placed on probation for one year due to criminal conduct during the past licensing period. Case number RE-19-109996

LYON, AMIE, sales agent, West Jordan, Utah. In an order dated April 16, 2019, Ms. Lyon's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-19-109212

MILLER, JON, principal broker, Salem, Utah. In an order dated April 24, 2019, Mr. Miller's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-109408

MITCHELL, KURT PATRICK, sales agent, Pine Valley, Utah. In an order dated May 15, 2019, Mr. Mitchell's application for licensure was granted and his license placed on probation for the initial licensing period due to a plea in abeyance agreement in a criminal



OUR MISSION STATEMENT

The mission of the Utah Division of Real Estate is to protect the public and promote responsible business practices through education, licensure, and regulation of real estate, mortgage, and appraisal professionals.

LICENSING AND DISCIPLINARY ACTIONS (CONT.)

matter. Case number RE-19-109888

MONEY, SAMANTHA, sales agent, Sandy, Utah. In an order dated May 8, 2019, Ms. Money's application for licensure was granted and her license placed on probation for the initial licensing period due to a plea in abeyance agreement in a criminal matter. Case number RE-19-109741

MORGAN, JASON SCOTT, sales agent, Salt Lake City, Utah. In an order dated May 3, 2019, Mr. Morgan's license was granted and immediately suspended for 30 days and then placed on probation for the remainder of the initial licensing period due to his failure to disclose criminal history in his application for licensure. Case number RE-19-109638

OLAYAN, TEMPLE F., sales agent, Orem, Utah. In a stipulated order dated March 20, 2019, Ms. Olayan admitted that through a limited liability company, she leased property with an option to purchase and then listed the property for sale without the owners' written authorization. Ms. Olayan represented her limited liability company in the purchase of the property but failed to disclose her status as a principal in the transaction. The sale to the third party failed when Ms. Olayan's broker learned that she intended to flip the property and instructed the title company not to close the second transaction.

Ms. Olayan's conduct was in violation of Utah law and administrative rules. She agreed to pay a civil penalty of \$3,000 and to complete six hours of continuing education in addition to the continuing education required for her next license renewal. Case numbers RE-15-76223 and RE-15-76226 and docket number RE-2018-048

OLSEN, SHERRI J., sales agent, Cornish, Utah. In an order dated May 13, 2019, Ms. Olsen's license was reinstated and placed on probation for one year due to a plea in abeyance agreement in a criminal matter during the past licensing period. Case number RE-19-109829

OLSON, MICAH J., associate broker, Orem, Utah. In an order dated May 22, 2019, the Real Estate Commission found that Mr. Olson made a substantial and intentional misrepresentation in violation of Utah law to a short sale lender when he failed to disclose a referral fee he was to receive in the transaction. Although a referral fee is not generally required to be disclosed, Mr. Olson had signed a short sale affidavit affirming that he would not receive any proceeds or remuneration from the transaction that was not disclosed in the HUD-1 Settlement Statement. The order assessed Mr. Olson a civil penalty of \$2,500 and his license was placed on probation for one year. Case number RE-15-74457 and docket number RE-2018-051

OROZCO, JORDON JADE, sales agent, Murray, Utah. In an order dated March 22, 2019, Mr. Orozco's application for licensure was denied due to his conduct at the license testing center which reflects negatively on his honesty, integrity, truthfulness, and reputation. Case number RE-19-108953

PAPPAS, JOYCE L., sales agent, Salt Lake City, Utah. In an order dated April 24, 2019, Ms. Pappas's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-109406

ROWLEY, BRANDEE J., sales agent, West Bountiful, Utah. In an order dated March 22, 2019, Ms. Rowley's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-108599

SANCHEZ, MICHAEL J., sales agent, West Valley City, Utah. In an order dated April 24, 2019, the Real Estate Commission found that Mr. Sanchez had committed several advertising violations related to the content and placement of a sign offering real estate for sale. The Commission assessed a civil penalty of \$1,000 to Mr. Sanchez. Case number RE-15-77892 and docket number RE-2018-052

SCHMIDT, NATHANIEL C., sales agent, Lehi, Utah. In an order dated March 5, 2019, Mr. Schmidt's license

(Continued on page 11)

LICENSING AND DISCIPLINARY ACTIONS (CONT.)

was granted and placed on probation for one year due to criminal history. Case number RE-19-107981

SORENSEN, JESSICA, sales agent, South Jordan, Utah. In an order dated March 5, 2019, Ms. Sorenson's license was renewed and placed on probation for the renewal period due a plea in abeyance agreement in a criminal matter. Case number RE-19-107989

SPERRY, BREANNA CELIA, sales agent, West Haven, Utah. In an order dated May 21, 2019, Ms. Sperry's application for licensure was granted and her license placed on probation for the initial licensing period due to a plea in abeyance agreement in a criminal matter. Case number RE-19-109999

STONE, GARY E., principal broker and dual broker, Provo, Utah. In a stipulated order dated March 20, 2019, Mr. Stone admitted that he failed to properly supervise a sales agent in violation of Utah law and administrative rules. The sales agent performed property management services while her license was associated with Mr. Stone's sales brokerage instead of his property management brokerage. In mitigation, the affiliation of the sales agent with the wrong brokerage was unintentional. Mr. Stone agreed to pay a civil penalty of \$500 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-14-72486 and docket number RE-2018-043

STUMP, MICHAEL BRADEN, sales agent, West Valley City, Utah. In an

order dated March 21, 2019, Mr. Stump's license was denied by the Real Estate Commission due to criminal history. Case number RE-18-104998

TURNBOW, RICHARD BURNELL, sales agent, Sandy, Utah. In an order dated May 1, 2019, Mr. Turnbow's license was renewed and placed on probation due to a pending criminal matter. Case number RE-19-109567

TWILLIGEAR, DALLIN RAY, sales agent, Salt Lake City, Utah. In an order dated March 11, 2019, Mr. Twilligear's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-19-108181

WAGNER, AARON, sales agent, Highland, Utah. In a stipulated order dated March 20, 2019, Mr. Wagner admitted that he had placed a misleading advertisement: that did not identify his brokerage; that contained the logo of a brokerage with which he was not affiliated; and that did not disclose that he was an "owner-agent." Mr. Wagner acknowledged that his actions were in violation of Utah law and administrative rules. He agreed to pay a civil penalty of \$1,500 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-15-79185 and docket number RE-2018-53

WALKER-NAWROCKI, KRISTI, sales agent, West Jordan, Utah. In an order dated May 23, 2019, Ms. Walker-Nawrocki's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-110087

WARREN, LAURA GRACE, sales agent, Park City, Utah. In an order dated March 15, 2019, Ms. Warren's license was renewed and placed on probation for the renewal period due to criminal conduct during the past licensing period. Case number RE-19-108357

TIMESHARE

GONZALEZ, DANIEL M., timeshare salesperson, Midvale, Utah. In an order dated April 30, 2019, Mr. Gonzalez's application for registration as a timeshare salesperson was denied due to criminal history. Case number TS-18-109520



UTAH DIVISION OF REAL ESTATE
NEWS

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Division Staff Spotlight



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Real Estate
Investigator

Meet Laurel North! Laurel joined the Division in April of this year as a Real Estate Investigator. Laurel has sold residential real estate for the past 24 years along the Wasatch Front and has loved almost every minute of it. She has her CRS, GRI and ILHM certifications and she's currently working to get her Brokers license. Laurel loves puzzles and she enjoys investigating the multi-layered Real Estate puzzles and cases here at the Division.

Before her life in real estate Laurel worked at the Hansen Planetarium filling her nerd tank full of everything astronomy.

Fun Facts: Laurel enjoys entertaining and cooking for friends and family, watching movies, playing games, star gazing, taking road trips and plane trips, visiting the homelands of her ancestors and hiking with her adorable English Pointer "Hinker Pie" aka Hinckley. She also started taking piano lessons for the first time 2 years ago and now enjoys plinking out jazzy tunes to entertain/annoy her neighbors.

The Division is excited to have Laurel as an investigator and to utilize her years of experience in the real estate industry.

Division Director Jonathan Stewart, Chief Investigator Kadee Wright, Real Estate Education Coordinator Jennica Gruver, and Licensing & Education Director Mark Fagergren traversed the state and conducted nine CARAVAN presentations.

Attendees from the Real Estate, Mortgage, and Appraisal industries participated in these events. Director Stewart expressed that “he appreciates that attendees take time from their lives and busy schedules to take part in these recurring yearly events.” Feedback from attendees expressed that they valued the professional discourse and especially the accurate and timely industry information that was presented. A brief synopsis of the materials shared at the CARAVAN will now be detailed.



Director Stewart expressed how the Division has been working with the Real Estate Commission to prepare a public service announcement alerting licensees and the public of ongoing e-mail scams involving real estate transactions and how such frauds can be avoided. Instructing clients regarding wiring instructions and how if they are “changed” the client should reach out to their agent, lender, or title company with the contact information provided by their agent. The Utah Association of Realtors has prepared a wire fraud alert disclosure form for the use and benefit of their members and their clients.

Director Stewart then presented legislative changes from Real Estate Amendments (S.B. 140) that went into effect on May 14th. Please refer to Director Stewart’s First Quarter Division Newsletter article entitled “Legislative Update,” for a thorough discussion of these important changes (https://realestate.utah.gov/newsletters/newsletter_q1-2019.pdf). You may also refer to Mr. Stewart’s article in this newsletter entitled “Rap Back Misconceptions.” Director Stewart also briefly discussed S.B. 121 entitled the Controlled Business in Title Insurance Repeal that was not included in or as part of the Real

Estate Amendments bill but does, however, potentially impact the real estate industry. The bill repeals previous provisions governing controlled business relationships in the title industry and now allows for certain affiliated business arrangements with a title company that were previously prohibited.

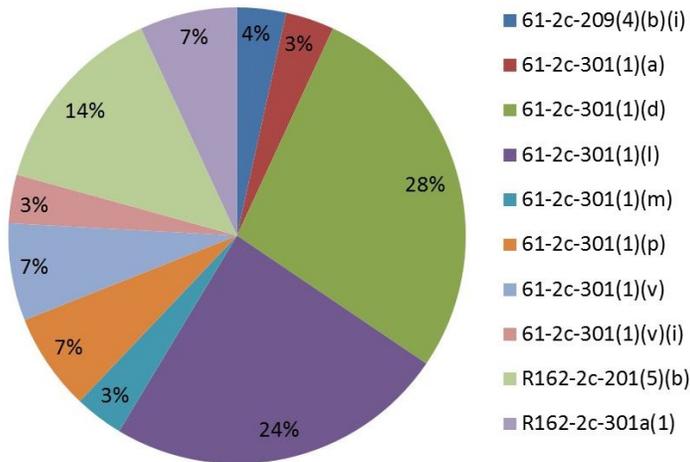
S.B. 121 enacts certain capitalization, affiliated business limits (70%), business reporting, and disclosure requirements for those engaged in such affiliated business relationships so that buyers and sellers are made aware of the licensee’s affiliated business arrangement. In addition, the Division of Real Estate is now required to enforce certain provisions of the federal Real Estate Settlement Procedures Act with regard to affiliated businesses and real estate licensees. Interested parties should refer to the bill and/or seek legal advice for specific information and/or guidance. <https://le.utah.gov/~2019/bills/static/SB0121.html>

Kadee Wright, the Chief Investigator, reviewed statistical information concerning enforcement and licensing actions taken by the Division and the “Top Ten” Administrative Rules and Statutory Violations for 2018:

(Continued on page 15)

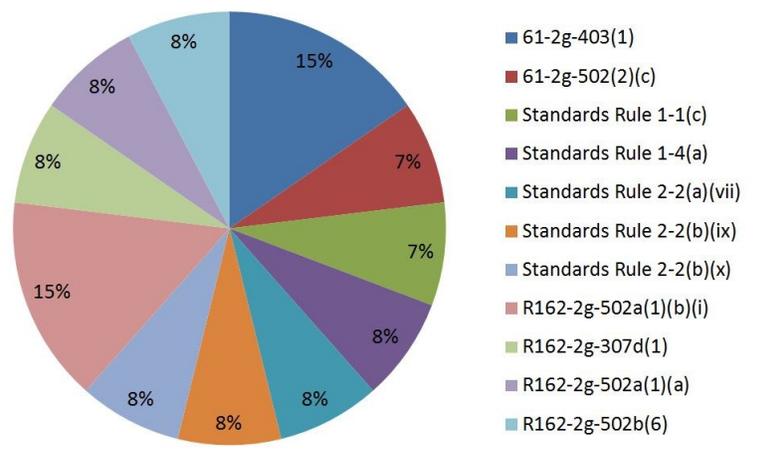
CARAVAN 2019 (cont.)

2018 Mortgage Violations



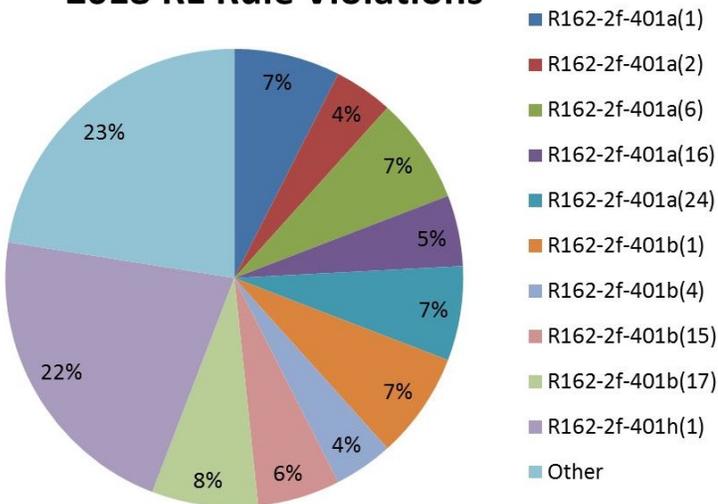
Complaints Received80
 Closed41
 Current Open Investigations102
 Cases pending with the Attorney General's office - 7

2018 Appraisal Violations



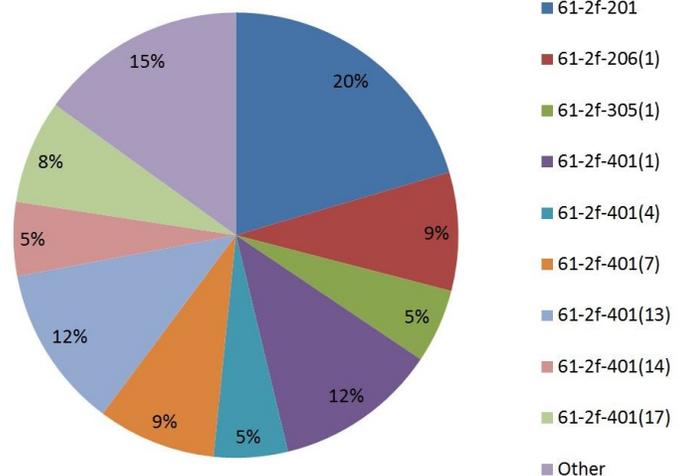
Complaints Received.....41
 Closed 50
 Current Open Investigations.....31
 Cases pending with the Attorney General's office - 3

2018 RE Rule Violations



Complaints Received.....419
 Closed.....203
 Current Open Investigations.....585
 Opened Licensing cases.....106

2018 Real Estate Statutory Violations



(from individuals failing to report criminal charges on renewal or on a new application)

Enforcement/Licensing Actions

Appraisal:

5 Enforcement
1 Licensing

Mortgage:

17 Enforcement
5 Licensing

Real Estate:

200 Enforcement
105 Licensing

Total Number of Actions Taken:

222 Enforcement
111 Licensing



Mark Fagergren, the Director of Licensing & Education shared licensing information and statistics for the mortgage, real estate, and appraisal industries. The number of active real estate licensees (20,127) now exceeds any previous total in Division history.

Mr. Fagergren discussed the mortgage 5-hour New Mort-

gage Loan Originator (MLO) Course that initial Utah MLOs are required to complete in the first full year following the year in which the MLO was initially licensed in Utah. He shared the numbers of MLOs who were required to complete the 5-hour course for their 2019 license renewal.

Mr. Fagergren cautioned all real estate and appraisal licensees to update their email addresses in their personal Real Estate License Management System (RELMS) Account under "Division Email Notifications" to ensure that they receive the email reminder notifications in advance of their license expiration date. He indicated that some Principal and Branch real estate brokers had allowed their licenses to expire causing the subsequent involuntary inactivation of their affiliated agents' licenses. Don't let this happen to you!! All licensees are responsible to ensure that their licenses have been renewed in a timely fashion.

Remember to plan sufficient time for continuing education courses to be completed early in your license renewal month to ensure a timely renewal. Completing your final CE course only a few days before your expiration deadline will most likely result in an expired license and unnecessary late fees.

Mark discussed the new Mandatory 3-Hour CE course for real

estate licensees. Ultimately the course will have three different "license specialties" - Residential (RM), Commercial (CM), and Property Management (PM). The residential course outline has been written and approved by the real estate commission for industry use by CE course providers. Potential Mandatory Course Instructors were coached on the residential course outline in a required instructor meeting held at the Division on June 26th. The commercial and property management course outlines are currently a work in progress by their respective industries and will be presented to the real estate commission once they have been presented to and edited by the mandatory course outline committee appointed by the real estate commission.

The Division anticipates that the Residential Mandatory 3-Hour CE course will be available for licensees by some educational providers this July!

You can view a list of the approved Mandatory Course providers by searching in the "Qualifying & Continuing Education Search" button found under the real estate tab on the Division website, found [HERE](#):



(continued on page 16)

CARAVAN 2019 (continued)

For additional information on the new 3-Hour Mandatory Course please refer to page 3 of the first Quarter 2019 Newsletter found [HERE](#).

Mark discussed limited agency and the importance of having a **mutually acceptable, written, limited agency agreement with informed consent of all principals to the transaction**, and some of the problems and potential repercussions when licensees don't. Obviously, paragraph 5 of the state approved REPC needs to confirm the mutually accepted limited agency agreement that had been previously agreed to and acknowledged.

Mr. Fagergren then discussed how S.B. 140 now allows appraisers to perform evaluations which are to be used solely for the company's use and not for lending purposes where the loan may potentially be sold on



the secondary market.

A discussion of the upcoming Appraisal Qualifications Board (AQB) Practical Applications of Real Estate Appraisal (PAREA) Courses ensued. These courses are not intended to replace the current supervisory mentorship model, but are being designed to provide an alternative for individuals who are interested in becoming an appraiser but are unable to find willing supervisors or prefer the PAREA experience model. PAREA courses are being constructed to broaden the training exposure of prospective appraisers, to include expanded market segments, and to provide greater consistency. The AQB has not determined the final percentage of required experience that may be gained by completing the PAREA courses, however, the number of up to 75% of required experience has been suggested.

Finally, Mark discussed some of the comments of Lyle Radke (the Director of Fannie Mae's Collateral Policy and Strategy Team), and Steve Corbin (the Director of Valuation in the Single-Family Risk Management Space at Fannie Mae) at a meeting of state appraiser regulatory officials and appraisers.

They suggested that there are a fixed number of appraisers and that increasing demand is likely

to exceed the capability of appraisers to complete assignments in a timely manner. The history of Fannie Mae has shown historically very similar results when comparing real estate agents' broker price opinions and licensed or certified appraisals. They discussed how bifurcated or hybrid appraisals may help to speed up the appraisal process by using specialized outsourced inspections, etc.

The appraisal industry, according to Mr. Radke and Mr. Corbin, needs to facilitate greater innovation and specialization, such as considering separating data collection from the appraiser and incorporating other new technologies into their work. Appraisers were challenged that their adjustment rates are in many instances "archaic."

The Division appreciates all those who make time to attend CARAVAN. Thanks for making the 2019 CARAVAN a great success!

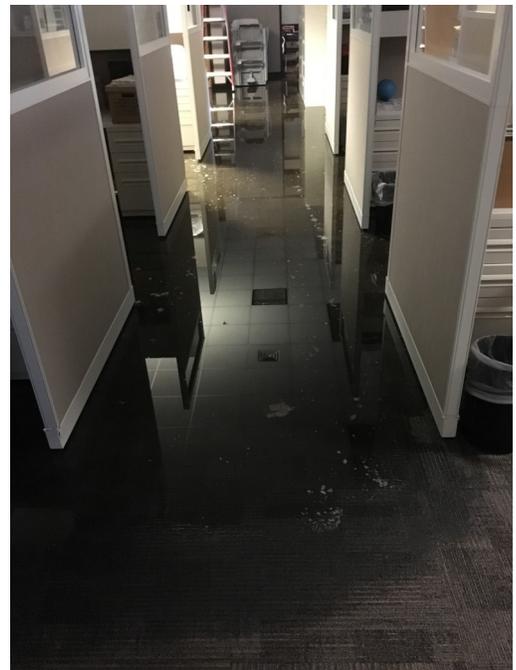
Division of Real Estate Office Received Water Damage (Water Damage & Elevator Repairs Recently Completed)



In mid-November, the Department of Commerce and Division of Real Estate employees arrived at work to find significant flooding and water damage throughout the Heber M. Wells Building as a result of ruptured ceiling water pipes. Water intrusion throughout the building and down elevator shafts required extensive repair work to office spaces and retrofit work to restore eleva-

tor service. In late April all water damage repairs had been completed and elevator service was restored. We apologize to those of you who attempted to conduct your business at the Division office, however were required to complete your business in the lobby of the Heber M. Wells building over the preceding 5 ½ month time period. We thank you for

your patience and once again welcome each of you to come to our refurbished office in downtown Salt Lake (Utah Division of Real Estate, Heber M. Wells Building, 2nd Floor, 160 East 300 South, Salt Lake City) or contact us via telephone (801-530-6747), e-mail (realestate@utah.gov), or Live Chat at (www.realestate.utah.gov) for any of the services we provide.



KAGIE'S KORNER

[TRANSACTION COORDINATORS AND PERSONAL ASSISTANTS]

At the Layton Caravan a question was raised regarding transaction coordinators, the duties they can legally perform, and their limitations. The Division would like to clarify the discussion from Caravan.

Can a transaction coordinator work for more than one brokerage?

- A transaction coordinator licensed with the Division can only perform activities that require a license for the brokerage with which they are affiliated, and any compensation must be paid by their principal broker.
- If a licensed transaction coordinator wants to work for agents affiliated with a different brokerage, the coordinator is restricted to performing only activities that do not require a real estate license for that brokerage and must be compensated at a predetermined rate that is not contingent upon successful transactions.
- An unlicensed transaction coordinator can work for multiple brokerages but can only conduct activities that do not require a license and must be paid at a predetermined rate, such as an hourly salary. The same principles apply to personal assistants. The Division makes no distinction between the two.

Let's review the following administrative rule:

R162-2f-401g. Use of Personal Assistants.

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

- (1) obtain the permission of the licensee's principal broker before employing the individual;
- (2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:
 - (a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;
 - (b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;
 - (c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;
 - (d) placing brokerage signs on listed properties;
 - (e) having keys made for listed properties; and
 - (f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;
- (3) compensate a personal assistant at a predetermined rate that is not:
 - (a) contingent upon the occurrence of real estate transactions; or
 - (b) determined through commission sharing or fee splitting; and

(4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2) (a).

The Division would like to go over and emphasize a few of the principles from the rule cited above to help licensees who want to employ an unlicensed person to manage a transaction. In order to employ an unlicensed individual a licensee **must** obtain the permission of the licensee's principal broker.

Attention Brokers! You have a supervisory responsibility for the supervision of both licensed and unlicensed individuals:

61-2f-401. Grounds for disciplinary action, subsection (14) provides that it is unlawful for a principal broker or a branch broker to fail to exercise reasonable supervision over the activities of the principal broker's or branch broker's licensed or unlicensed staff. Failing to exercise reasonable supervision is grounds for disciplinary action.

On a precautionary note, the Division does not know how a principal broker can adequately and reasonably supervise an individual that is not associated with the principal broker's office.

An unlicensed individual is limited in the activities that they may engage in.

An unlicensed individual would have to be compensated at a predetermined rate that is not contingent upon the transaction closing or through commission sharing or fee splitting.

In regards to a licensed transaction coordinator or licensed personal assistant working for multiple brokerages, the following Statutes and Administrative Rules prohibit such conduct unless the conduct

is limited to activities that do not require a license when performing for the brokerages with which licensed transaction coordinator is NOT affiliated:

61-2f-305 Restrictions on Commissions.

(1) Except as provided in Subsection (2), an associate broker or sales agent may not accept valuable consideration for **the performance of an act specified in this chapter** (licensed activities) from a person except the principal broker with whom the associate broker or sales agent is affiliated (emphasis added).

R162-2f-401a Affirmative Duties Required of all Licensed Individuals.

16)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker.

61-2f-401 Grounds for Disciplinary Action.

(3)(b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or

(c) representing as sales agent of having a contractual relationship similar to that of sales agent with a person other than a principal broker.

61-2f-401 Grounds for Disciplinary Action.

(6) for a principal broker, paying or offering to pay a sales agent or associate broker who is not affiliated with the principal broker at the time the sales agent or associate broker earned the compensation.

We hope that this clarification is helpful to any licensees considering the use of a transaction coordina-

Utah Division of Real Estate Instructor Development Workshop – 2019 –

Name: _____ License #: _____ - _____

License #: _____ - _____

Phone: _____ E-Mail: _____

REGISTRATION FEE INCLUDES:

- LIGHT BREAKFAST AND LUNCH
- WEDNESDAY 10/23:
SIGN IN & BREAKFAST 9AM - 9:45AM
WORKSHOP 10AM - 5PM
- THURSDAY 10/24:
SIGN IN & BREAKFAST 8AM - 8:45AM
WORKSHOP 9AM - 4PM

Check Visa MasterCard American Express

Card #: _____

Exp.: _____ CCV#: _____

Signature: _____

NOTE: For security reasons please submit credit card payments by FAX ONLY! (See below for fax #)

MAKE CHECKS PAYABLE TO: UTAH DIVISION OF REAL ESTATE

REGISTRATIONS RECEIVED AFTER OCTOBER 11TH INCLUDE A \$20 LATE FEE

Sheraton Salt Lake City Hotel - 150 West 500 South - SLC



Len Elder

Please Select One Option:

Wednesday 10/23 — \$50

Thursday 10/24 — \$50

Both Days — \$75

• Division of Real Estate • PO Box 146711 • 160 E 300 S • Salt Lake City, UT 84114 •
Phone: (801) 530-6747 • Fax: (801) 530-6749 •



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah
Department of Commerce
Division of Real Estate

FRANCINE A. GIANI
Executive Director

JONATHAN C. STEWART
Real Estate Division Director

INSTRUCTOR DEVELOPMENT WORKSHOP
Wednesday & Thursday, October 23rd and 24th
Sheraton Salt Lake City Hotel

The Division of Real Estate will be holding our annual Instructor Development Workshop (IDW), Tuesday and Wednesday October 23rd and 24th at the Sheraton Salt Lake City Hotel. We are excited to announce the return of this year's speaker, Len Elder.

Len believes that educational classes and events should leave students excited, energized, inspired and knowledgeable. Combining his background in law, finance, real estate and education Len Elder, DREI, JD, is the Senior Instructor at Superior School of Real Estate in North Carolina. He was a nationally recognized intercollegiate debate award winner and was the Speech Forensics Debate Coach for Capital University. He is the youngest recipient ever of the John J. Getgey Memorial Award for Academic Excellence and Achievement in the practice of law. As an attorney, Len was undefeated in court of appeals proceedings and in arbitration hearings. The National Real Estate Educators Association (REEA) has recognized Len as a Distinguished Real Estate Instructor (DREI). He has been published as the author of law journal articles, cover stories for the National Real Estate Educators Association Journal and his books titled, "Ovation – How to Present Like a Pro" "UnRandom Thoughts" and "A Treasonous Season" are published on Amazon.com.

He has been a past board member of the National Real Estate Educators Association, the Past President of the North Carolina Real Estate Educators Association and an elected member of the national Distinguished Real Estate Instructors Leadership Council. A regular presenter and keynote speaker across the country Len currently teaches and presents courses nearly 2,000 hours per year.

Len is also the recipient of the Larry Outlaw Award for Excellence in Education, The NC Instructor of the Year Award, REEA's Classroom Program of the Year Award, the Mark Barker Lift Me Up Award and numerous other recognitions in the field of education in the real estate industry.

NOTE: Attendance at the two-day IDW is REQUIRED once every two years for all real estate, mortgage, and appraiser pre-licensing instructors and Real Estate Mandatory 3-Hour Course Instructors. Mortgage and appraisal instructors are invited to attend this course although no CE credit can be given. Only Real Estate instructors (pre-license and continuing education) as well as attending real estate licensees, will receive 12 hours of core continuing education credit for attendance at this outstanding training event. Please keep in mind that CE credits are only awarded in full-day segments.

160 East 300 South, 2nd Floor, PO Box 146711, Salt Lake City, UT 84114-6711
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