

Gary R. Herbert, Governor

Francine A. Giani, Executive Director

Jonathan Stewart, Division Director



Fourth Quarter 2014

Director's Message

Protect Yourself

Something the Division sees pretty consistently is a complainant who has attempted to work out their concerns with a licensee with no resolution. Working out a problem before a complaint is filed with the Division can benefit you by helping you retain customers and possibly get additional business. Whatever the cost is to resolve the complaint up front, it will most likely save you time and money in the long run.

Resolving problems early on will also save you the time of trying to defend yourself to the Division, Commission, or Board—time that could be spent working with clients. It is an opportunity cost that can be avoided.

This can also help you avoid seeing your name in a future Division newsletter. We have been told many times that everyone turns to the disciplinary section of the newsletter first to see who has “gotten into trouble.”

That does not mean that all complaints can be resolved up front, or that you should always do whatever



Jonathan Stewart

Several weeks ago I had the opportunity to speak to a group of Real Estate Brokers about how to protect themselves from violating statutes or administrative rules. For this article, I will focus on three things that all licensees can do to protect themselves.

- 1- Resolve issues before complaints are filed with the Division.

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Paper License Renewal & CE Completion Forms No Longer Accepted *(Reminder Notice)*

Since the third quarter of 2010 the Division no longer processes paper license renewal forms or manually enters individual licensee continuing education (CE) course completion data. Since the Division no longer accepts or processes paper renewals or CE credits for manual entry, real estate and appraisal licensees need to complete their online license renewal in the Division RELMS System by the end of their license expiration month. Administrative Rule R162-2f-204 (2)(b)(iii)(A) states that:

Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f 401d(1)(j).

Therefore, it is essential that licensees factor in sufficient time to allow for course providers to upload CE course completion data into the licensee's individual RELMS account, before they attempt to renew their license in RELMS. Licensees who delay completing their continuing education until the last few business days of the month run the risk that their recently completed CE course completion documentation does not have sufficient time for course providers to enter it into the licensee's individual RELMS account.

Despite the requirement to renew in RELMS by the end of the month, every month on the last day or two

of the month, a few licensees object to the Division that they have completed their last continuing education (CE) class(es) and desire to submit their CE certificate(s) to the Division to be manually processed in order for the licensee to renew on time. Once again, the Division no longer processes paper license renewals or manually enters CE completion data into licensee records. Licensees need to factor in sufficient time for the CE course provider(s) to bank their credits, and for those credits to be entered into their RELMS account.

You may recall that CE banking is not an instantaneous uploading process or system. There is a time lag from when course providers enter CE course completion data, and when that data is electronically entered into the licensee's individual accounts.

The downside to the banking system we employ is the time delay for data entry (typically several business days). The upside to the banking system the Division employs is the cost (zero). Neither education providers nor individual licensees are charged anything for

the banking service the Division employs despite typical banking fees of \$1.50 per CE credit hour that providers typically charge for instantaneous CE banking. That is a huge savings of as much as \$150,000 per year by Utah Real Estate Licensees not having to pay CE banking fees assessed for "live" CE banking!

However, in order to ensure a timely renewal of their license, licensees therefore need to either have proof of completion of their entire required CE by the 15th day of the month of expiration (R162-2f-204 (1)(a-c)), OR have renewed their license in the RELMS system by the end of their license expiration month.

Please plan ahead in order to avoid paying an unnecessary \$50 late fee by completing your approved CE by the 15th day of the month of license expiration. The Division thanks and congratulates the 95+% who complete their CE in a timely manner, renew their license with the RELMS system by the last day of the month, and thus avoid an unnecessary late fee. 



Mortgage Call Reports - Changes Coming

Utah licensed entities have been submitting Mortgage Call Reports (MCRs) since the third quarter of 2012. This year, mortgage entities submitted their Call Reports in a more timely manner and fewer were held up in the renewal process for failure to complete the reports. As of this writing 126 out of 844 entities have not submitted their Call Reports and therefore have been unable to renew. That means 85% of our entities completed their Call Reports in a timely manner and were able to renew early in the renewal cycle!

For a better understanding of the Mortgage Call Report, the MCR is a quarterly report of condition a mortgage company submits through the NMLS. These quarterly reports are comprised of two parts: the state-level "Residential Mortgage Loan Activity Report" (RMLA) and the entity level "Financial Condition Report." In addition, most companies file the "Standard" version of the MCR. Companies that are Fannie Mae or Freddie Mac Seller/Servicers or Ginnie Mae Issuers file the "Expanded" version of the MCR.

The following enhancements to the MCR are set to be implemented:

- The addition of nationwide servicing fields which will be required for all companies and additional state-specific servicing reporting for Expanded MCR filers. This will require reporting starting in the first quarter of 2015.
- The inclusion of fields to capture the amount and count of Qualified Mortgages (QM) and Non-QM loans that are closed and funded during the quarter. This data reporting will also be required of all companies starting in the first quarter of 2015.
- New data fields to capture changes in loan application amounts during a quarter for each state will be included for reporting in the first quarter of 2015, but enforcement on this reporting requirement will begin in the first quarter of 2016.
- The addition of written guidance on the definition of the term "application" will be introduced in the first quarter of 2015 as guidance, with the formal adoption as the official MCR definition delayed until the first quarter of 2016.



Appraiser Qualification Criteria Changes Take Effect

Appraisal Qualifications Board (AQB) changes have now taken effect. Any candidate for Licensure or Certification now must meet all qualification criteria changes that were first announced by the Division back in March 2012. As stated previously there will be NO exceptions to the new AQB requirements.

Some candidates have contacted the Division and posed the question that since they were approved to sit for a Licensed or Certification exam in 2014, "Can they submit their application once they pass the exam in 2015"? Other applicants have asked "since my application was submitted in 2014, will I be evaluated and able to be tested under 2014 AQB requirements? The response to both of these questions is that after December 31, 2014, any application for licensure or certification must meet all 2015 AQB qualification criteria.

The Division appreciates the considerable amount of time and effort many applicants, educators, supervisors, volunteer experience reviewers, and staff members took to assist and prepare candidates in advance of the 2015 deadline. Unfortunately some candidates failed to meet all necessary requirements and were not licensed or certified before year end.

Thanks for your conscientious efforts and we look forward to the competent and quality work product produced by the well qualified 1,241 Licensed or Certified appraisers in Utah!



Division of Real Estate

Thank You Commission Member Ashton



We have been very fortunate to have had Kay Ashton serve on the Real Estate Commission from June 2006 – November 2014. Kay has been serving as the public member for the commission and has an extensive mortgage background. He has been working in the industry for over 30 years. Kay has also served on many different boards and board of directors in the mortgage industry. Kay is committed to the excellence of licensees in the Real Estate and Mortgage professions and serving fellow licensees in many capacities.

We appreciate the guidance and direction that Kay has provided the real estate industry during his continual years of service and wish him continued success in his future endeavors. 

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it takes to resolve a concern, but it's usually best to at least attempt to address issues before a complaint is filed with the Division.

For example, we have heard on several occasions about real estate brokers that have been approached by a client of the brokerage complaining about the agent that represented them. The broker, without talking to the agent in question and without reviewing the file, will side with their agent instead of finding out as much as possible before making a determination about who was wrong. Maybe your agent did nothing wrong, but if they did, wouldn't you want to know, resolve the complaint, and avoid similar situations in the future?

- 2- If a complaint is filed with the Division, cooperate with us in the investigation.

This may seem counterintuitive, but more often than not, it will speed up the process and help to achieve a more favorable outcome. Part of the investigative process includes allowing the respondent to give their side of the story, provide documents or testimony, and answer questions the Division may have. Often people refuse to cooperate, but this part of the process is the best time for a respondent to defend themselves. Many times a respondent will provide the Division with information that helps us decide to close the case. By answering our questions and cooperating with an investigation we get the whole story and can make an informed decision about how to proceed. Without this part of the puzzle, we are forced to rely on only what comes in with the com-

plaint. The Division wants to find out what actually happened; if you choose to not cooperate, we have to make a decision based on the information we have.

- 3- Rely on up-to-date statutes and administrative rules.

This occurs less often, but is still worth mentioning. Stay up-to-date on the statutes and administrative rules and any changes that are made. If you rely on outdated statutes and rules, you might think you are following the law, but actually be in violation. We have had people come to the Division to defend themselves against allegations using statutes or administrative rules that are sometimes years old. The Division is required to use the version of the statutes and/or administrative rules that were in place at the time of the conduct. If the conduct happened in 2012 and you bring in a copy of the statute from 2009, it will be a problem. This is why it is so important to read the newsletter, attend commission/board meetings, and stay up-to-date on any changes that may occur with statutes and rules.

The Division would like to focus its time and attention on egregious violations. A lot of complaints against licensees can either be resolved prior to a complaint being filed with the Division, or can be resolved more quickly if a respondent cooperates with the Division. You can help yourself and your business by taking a few simple steps. All of us at the Division of Real Estate wish each of you a happy, healthy, and successful new year. 

Kagie's Korner

Referral Fees

The Division continues to receive phone calls about referral fees, including when and under what circumstances a licensee may pay or receive referral fees. I have previously written about this issue, but I thought that with the recent increase in questions on this topic, now would be a good time to re-address the issue and to give a few examples for the real estate and mortgage industries.

Real Estate

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

A: NO.

Utah Code § 61-2f-302 (2) (a) An inactive associate broker or sales agent may not conduct a real estate transaction until the inactive associate broker or sales agent becomes affiliated with a principal broker and submits the required documentation to the division.

A referral fee is a real estate transaction because the act of prospecting for a fee requires a license. In order to be paid a referral fee, a licensee must be actively licensed with a Principal Broker and may only receive payment of the fee through the licensee's Principal Broker.

Q: May a real estate licensee

pay a referral fee to an unlicensed person or entity for securing real estate transaction/prospects?

A: Generally, the answer to this question would be no, although there are a couple of exceptions under the rules depending on whether the transaction is a real estate or property management transaction.

Administrative Rule R162-2f-401b (12) a licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that: (a) a licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and (b) as to a property management transaction, a licensee may compensate an unlicensed employee or current tenant up to \$200 per lease for assistance in retaining an existing tenant or securing a new tenant;

A real estate licensee may not go to a person or entity and say, "If you send me a referral and it results in a transaction, I will pay you a referral fee." This type of statement is a solicitation and would violate this rule. However, a licensee's uncle might say to his neighbor, "My nephew is an agent, and he can help you sell your house." This would be an unsolicited referral. If the neighbor then lists his home with the licensee and the home sells, the licensee could give his uncle a gift valued at up to \$150. The key question to determine is whether this referral is solicited. If solicited, no referral fee can be paid. If unsolicited, a referral fee can be paid in the amounts referenced above. Be wary though about creating an expectation for the fee, as

this could be seen as being a solicitation.

In a property management transaction, a referral fee up to \$200 may be given to an unlicensed employee of the management company, or a current tenant of the management company, when they help secure a new tenant or retain an existing tenant. If the individual is not in one of those two categories, they cannot be paid the referral fee.

Q: May a real estate licensee pay an unlicensed individual or company for a list of potential clients.

A: NO.

Such action would be a violation of 61-2f-401 (5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared: (a) with a principal broker of another jurisdiction. The Division may take action against the licensee for violating the above statute, and also against an unlicensed individual or company for the unlicensed activity. All activity geared to generate a potential client requires a real estate license to make the initial contact with the prospective client.

Q: May a real estate licensee receive a referral fee for referring a client to a mortgage licensee?

A: NO.

Administrative Rule R162-2f-401b Prohibited Conduct As Applicable to All Licensed Individuals. (13) accept a referral fee from: (a) a lender; or (b) a mortgage broker;

A real estate licensee accepting any

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type of referral fee from a mortgage licensee is prohibited by rule and statute. If the mortgage licensee paid a referral fee and it was accepted by a real estate licensee, both licensees would be in violation of their respective statutes and rules and could face fines of up to \$5,000 per violation.

Mortgage

Q: May a mortgage licensee give or receive a referral fee?

A: No. A mortgage licensee is prohibited by statute from either paying or receiving a referral fee.

Utah Code § 61-2c-301: (1) A person transacting the business of residential mortgage loans in this state may not (a) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business; or (c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing

services related to a residential mortgage loan transaction.

If in doubt, or if you have any questions about whether a proposed referral fee would fall under any of the above restrictions, I would strongly recommend that you talk with your Principal Broker or Principal Lending Manager. They are a licensee's first line of defense for compliance with the statutes and rules governing referral fees. 

Carla Westbroek Retires From the Division



Any Trainee or Appraiser in Utah knows and has most likely interacted many times over the years with Carla Westbroek, the Division Appraisal Licensing Specialist. After a successful career, Carla has decided to retire and spend more time at home with her family, especially her grandkids.

Carla has been instrumental in assisting the Division and appraisal industry in a number of ways, including, reviewing and advancing appraisal applications and renewals, approving qualifying and continuing education courses, submitting Utah appraiser rosters to The Appraisal Subcommittee (ASC), and registering Appraisal Management Companies (AMCs).

Mark Fagergren (Division Licensing & Education Director) will especially miss the thorough and conscientious efforts of Carla. "Carla has helped the Division weather two major AQB criteria changes (in 2008 and 2015). She assisted in the introduction and implementation of appraiser trainee registration and

then licensing, and Appraisal Management Company (AMC) registration and subsequent surety bonding requirements.

In addition, every two years the Division is audited by the ASC, and thanks to her capabilities and attention to detail the Division has complied with, and in a number of instances exceeded their stringent requirements".

We thank Carla and will miss her contagious laughter and her meticulous work. We are also very happy for her and wish her many good times as she enters this new phase in her future as she now becomes an "Appraiser Licensing Emeritus"(ALE).

Carla would like to sincerely thank the group of experience reviewers who have devoted an incredible amount of time to assist Carla and the industry, the past and present members of the Appraisal Licensing & Certification Board, and all those who have kindly and generously assisted her over the years. 

Appraisal Government-Sponsored Enterprise Updates

In October, Appraisal Investigator Theron Case and I attended the annual conference of The Association of Appraisal Regulatory Officials. One of the subjects that I found of particular interest and thought should be passed on to our appraiser licensees was a session regarding Government-Sponsored Enterprise (GSE) updates in which representatives from FHA, Fannie Mae, and the VA were present to discuss either recent changes to their guidelines, or forthcoming updates.

FHA's representative told conference attendees that FHA is working on catching up with the 20th century, and would be making numerous changes to their guidelines. One change that FHA is looking to make includes requiring a three year sales history on comparable sales. This is currently the case with the subject property, but will also at some point be applied to comparables.

The VA representative discussed how the VA has contracted with CoreLogic to use software to perform checks on VA appraisals. The spokesperson said by using this new software, the VA will be assisted in reviewing and verifying information about comparables used in appraisal reports.

The VA representative stated that even though it is difficult for appraisers to become eligible to perform VA appraisals, the VA is aware of a number of problem areas with appraisers authorized to do appraisals

on VA loans. As such, the VA is anticipating that it will look to increase the number of complaints that are filed with state licensing agencies.

The Fannie Mae panel member discussed a large number of changes and issues related to Fannie Mae guidelines. First, Fannie Mae has a quality management process that it conducts. Typically, the process of reviewing appraisals has been occurring three to four years after a loan is originated, but now Fannie Mae will conduct the quality management process at the start of the loan origination process.

Fannie Mae's representative said Fannie has been gathering a large amount of data from appraisals and on specific appraisers. Fannie then uses all of this data to look at discrepancies between each appraiser's work, such as reviewing the quality and condition ratings assigned by an appraiser or adjustment amounts used. Fannie expects that the quality and condition rating or adjustment data may change with new information, but not when making changes within a particular assignment.

For example, Fannie will review the amounts used by an appraiser for adjustments made to GLA. Fannie has seen examples from appraisers who make a consistent adjustment, such as \$10 per square foot for GLA adjustments, regardless of other conditions.

These other conditions, which could affect the adjustment basis, could be

things such as varying GLA sizes (e.g. 1,000 GLA homes v 6,000 square foot GLA homes), quality and condition of homes, or values of homes (e.g. \$200,000 homes v multi-million dollar homes). Fannie recognizes that a flat adjustment rate of \$10 per square foot of GLA may hold for a particular class of house, but that the amount may not be appropriate for other classes of homes in general.

Attendees were told Fannie uses most of the data that it gathers to educate appraisers upon learning where appraisers have potential issues in their work. Fannie's rep said there is also a misconception about how the data is used. Fannie does not automate reviews of all appraisals through the data gathered. Fannie will use the data to flag certain issues through an automated process, but then a person will review the appraisals in question when addressing any specific issues with an appraiser's work.

Fannie's rep also told attendees that there are a number of myths about Fannie's requirements. The rep suspected that even though Fannie tries to correct the myths through training for appraisers and underwriters, many myths continue to cause problems for appraisers. As such, Fannie is looking to correct some of these issues in the changes to their guidelines.

One of the myths discussed was about adjustments related to quality and conditions ratings. Fannie recognizes that even though a subject and



Utah! Division of Real Estate

NEWS

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2014 Published by

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a comparable may be in the same quality range, there may be an adjustment warranted. If that is the case, Fannie asks for an explanation to be noted in the appraisal for the reason an adjustment is made.

Another myth is in regard to comparable ages and distances from the subject, specifically the "one mile" distance issue. Fannie's rep said Fannie does not have any requirements regarding comparables being a mile from the home, but suggested any discrepancies be explained.

Also, the rep said adjustments made on the grid above the GLA line generally just need an explanation in the appraisal. The rep said GLA and adjustments made below the GLA line are generally understandable. Fannie's rep again noted that there may be some thought needed about adjustment amounts. For example, appraisers may adjust bathrooms at \$2,000 per bathroom, but does not take into account a home selling at about \$150,000 versus a home selling for \$650,000 and that bathrooms were adjusted at \$2,000 per bathroom 30 years ago.

Finally, the last myth had to do with Fannie's 15%/25% adjustment guidelines. Fannie was fine with appraisers going past these guidelines, but wanted explanations in support of going past the guidelines. Fannie's rep said that when appraisers under-adjust differences, especially to stay within the 15%/25% guideline, it leads to appraisers over valuing homes, can lead to larger issues, and is unacceptable.

The rep said he did not know why

why underwriters or others have not accepted appraisals that go above the 15%/25% guidelines when explained, as this is allowed by Fannie. The rep said since this particular issue has been problematic and has the potential to lead to over valuing homes, Fannie will soon be removing this guideline in its entirety.

Lastly, each representative was asked about whether they specifically allow trainees to do work for their appraisal assignments. Fannie's rep stated that trainees can do work on Fannie assignments, but trainees can only sign reports if allowed by their particular state. (Utah does not allow a trainee to sign, but a person licensed or certified may sign if acquiring experience to obtain a different level of certification.) FHA's rep stated a trainee is allowed to do work, but that a certified appraiser must do the inspection and analysis. FHA does require that the work done by the trainee be disclosed. VA's rep said VA policy is similar to FHA in that the VA appraiser must inspect the property, and the work done by the trainee needs to be disclosed in the appraisal. The VA will hold a trainer responsible for the trainee's work.

Certainly, one of the things to take away from the conference presentation is this: ensure that your appraisals have enough disclosure/comments regarding the reasoning for adjustments made or factors considered. This seems to be a common issue that the Division sees as well, and usually is where we spend our time questioning appraisers and their reports. Also, this shows that guidelines are useful, but are not necessarily a make-it-or-break-it issue when comments are provided. 

Is Impartiality Impractical, Impossible, or a basis for the appraisal profession?

I recently had a late night discussion with my old business partner, cousin, and friend. He left the appraisal profession to pursue other opportunities with computer software and brings to our discussions interesting thoughts on current business practices and systems.

One of the issues he faces in his current work environment is helping those with whom he works to remember why they are in business, and why it is that their customers purchase software from their company.

It brought up in our discussion the "why" question. He mentioned how often in the pursuit of the how and what, the **why** is forgotten.

In looking further into this question I found a number of thoughts and articles investigating the "why" question.

Mark Twain is often attributed with saying, "The two most important days in your life are the day you are born and the day you find out **why**."

The Division of Real Estate mission statement first tells us **why** the Division is here and then explains how we accomplish the **why**. It states; "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."

The preamble found in the Uniform

Standards of Professional Appraisal Practice (USPAP) gives a **why** it is needed when it states, "The purpose of USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers."

For this article, I would like to discuss "**why**" appraisers need to be impartial. And "**why**" those involved in any transaction using an appraisal need an impartial party involved. To have us all on the same page I have found a reasonable definition of impartiality.

Impartiality (also called evenhandedness or fair-mindedness) is a principle of justice holding that decisions should be based on objective criteria, rather than on the basis of bias, prejudice, or preferring the benefit to one person over another for improper reasons. ¹

The first question of "**why**" appraisers need to be impartial has an easy answer: the law requires you to be. Under the Conduct section of the USPAP Ethics Rule it states, "An appraiser must perform assignments with impartiality, objectivity, and independence, without accommodation of personal interests." ²

Sure, there are other possible answers to this question, but I think those can also be addressed with my second question: **Why** do those involved in a real estate transaction using an appraisal need an impartial party involved?

Probably the best analogy is sports.

Each of the teams and fans has their agenda. Win, that's what really matters, right? In sports emotions run high. At times there is a lot on the line and hours upon hours have been spent training for those game time moments. An important aspect of sports is that neutral parties (referees) are impartial and act independently of the parties involved. Anytime allegations of lack of impartiality arise, people become upset and leave the event with a feeling of being cheated.

In real estate, emotions also run high. Each transaction has a number of players with a lot on the line, and at times parties involved have many hours devoted to the property or ability to obtain the property.

Because each of the parties involved has their own best interests in mind, the information they are willing to share is that which benefits them. They are their own best advocate and rightly advocate for their position. But they are also often blinded to the positions that do not support their interests. I guess we would attribute this to human nature.

It is vital to have a disinterested party who everyone can recognize as being impartial to each other's position, of being objective in their decisions and rational, and independent of all parties involved.

Having the "right" or "correct" value placed on a property is in each party's best interest. No one likes to be, or feel, cheated. Feeling cheated

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instigates the fight or flight instinct. A buyer that finds they have overpaid for a property is then left to seek a legal recourse, if possible, to correct the situation or walk away, leaving the lender to deal with the problem. It may be possible for a seller to benefit from this situation. However, if a resulting lawsuit entangles the seller, any benefit will likely be erased.

The appraiser is the stabilizing force among the parties involved in a transaction where each has their own needs and agenda. An appraiser is able to gather and develop the necessary information to solve the problem. An appraiser wears many hats. First, an appraiser is an investigator, who researches and develops the relevant information needed to solve the value problem. This often involves talking with knowledgeable parties, performing research and inspections, and then gathering all of the information to perform an objective analysis. But it is not enough to gather and make an opinion of the information. An appraiser then wears the hat of a reporter in how they take the information and the resulting analysis and create a report which the parties involved can understand.

Too often, I find the parties involved are unable to follow how the appraiser jumped from A to B. The appraiser needs to remember who the client and intended users are. Doing an appraisal for a lender that has an underwriter who has read and reviewed thousands of appraisal reports would require a different amount of explanation than one that is done for a divorce. In a divorce situation, the client or intended users may have only seen a few appraisals.

An impartial party (appraiser) should see through the smoke created by the bias or agenda of other parties involved. Often both sides have valid arguments to put forth as to why a value on the high range or low range is supported, but more often it is the smoke of their personal needs that is given or used to try to influence the appraiser.

There are many professions that have a primary focus to advocate for their client. When you hire a real estate agent or an attorney, you really hope they are your advocate and have your best interest in mind. The parties involved also know or expect those types of professions to be in an advocating position, whereas the expectation of an appraiser by participating individuals, whether those parties are a client or not, is that the appraiser is impartial, objective in their decisions, and acts independently of all parties.

Often, while investigating complaints here at the Division, there appear to be times where an appraiser may have been influenced by one or more of the parties involved. Over the course of time, I've noticed a pattern mostly in non lending situations, but this is not always the case.

Here is an example of the type of case I am describing. An appraisal is ordered, and one of the parties involved does not like or understand the resulting opinions (e.g. value). A new appraisal is ordered by the party not agreeing with the first appraisal.

When ordering the second appraisal, the first appraisal is used as a reference by the non-agreeing party to show the second appraiser their issues and problems with the first

report. This party is trying to influence the second appraiser as to what is wrong in the first appraisal, and why. Often, the party who ordered the original appraisal is not offered a chance to express their opinion of the first appraisal or offer information they have about the property to the second appraiser.

In some of these types of complaints we review, both reports are at opposite ends of the value spectrum. It is also not uncommon that both reports share at least one comparable. Oftentimes, that comparable value adjusts at the midway point between both appraisers' opinion of value. In one case in particular, that common comparable appeared to be the most similar of all the sales used in both reports, yet, in one appraisal, that was the high sale used, while in the other, it was the low sale.

Although I do not think an appraiser purposefully tries to be influenced, I often wonder what their opinion would have been if they had heard the other side's thoughts as part of their review of information. Although this is often not possible because of the confidentiality rule, an appraiser needs to remember the USPAP Ethics Rule requires them to be impartial, objective, and act independently.

It is this impartiality, objectivity, and independence that sets the appraisal profession apart from other valuation or price experts, and it allows the parties involved to know they were treated fairly.

¹ <http://en.wikipedia.org/wiki/Impartiality>

² Uniform Standard or Professional Appraisal Practice. Ethics Rule, Conduct, Line 229-230 page U-7



Division of Real Estate

Welcome Commission Member William O. Perry IV



I am honored to serve as a new Commissioner of Real Estate for the State of Utah. I look forward to working with the real estate industry in our great state. I am currently employed as Vice President and General Counsel of Perry Homes, Inc., a Murray, Utah based conglomerate of homebuilding and real-estate development companies with operations and properties in Utah, Idaho and California. Our company has built over 9000 homes and been deeply involved in real estate development in Utah since its inception in 1976. I have been in my current position for 12 years.

Prior to joining Perry Homes I was a corporate attorney at Dechert, LLP in Philadelphia, Pennsylvania where I specialized in corporate mergers and acquisitions. I received my Juris Doctorate from Brigham Young University in 2000 and continue to teach at Brigham Young University as an adjunct professor at the David M. Kennedy Center for International Studies. I reside with my wife Kacey and our four children in Draper, Utah. I look forward to interacting with you as a commissioner and helping Utah continue to be a great place for the real estate industry in the future.



Rule Developments Since October 1, 2014

To view and comment on any proposed or amended rules, please visit the Utah State Bulletin at <http://www.rules.utah.gov/publicat/bulletin.htm>

Appraisal Management

Rule 162-2e-401. A proposal to amend this rule was filed November 21, 2014. The proposed amendment provides that failure by an Appraisal Management Company (AMC) to pay an appraiser within 45 days of completion of an appraisal assignment is unprofessional conduct by the AMC, subjecting the AMC to disciplinary action. The proposed rule amendment is open for public comment until January 14, 2015.

Appraisal

Rules 162-2g-102, 304a, 304b, 304c, 304d, 502b, and appendices 1-3. These administrative rules were amended to update the education, experience, and supervisory/trainee rules which go into effect January 1, 2015. In addition, the rule amendment specifies prohibited conduct by continuing education providers.

Mortgage

Rule 162-2c-201. A proposal to amend this rule was filed December 4, 2014. The proposed amendment provides a third option by which an applicant for a lending manager's license may demonstrate the required industry experience. In addition, the amendment allows an applicant for a lending manager license to request approval from the Division to take the prelicensing education prior to verifying the applicant's experience if verifying the experience could affect the applicant's current employment status. If the applicant is approved for the prelicensing education prior to documenting the necessary experience, the applicant assumes the risk of time and expense of prelicensing education, testing, and application fee with no assurance that applicant's experience will qualify the applicant for licensure as a lending manager. The proposed rule amendment is open for public comment until February 2, 2015.

Real Estate

Rule 162-2f-206. A proposal to amend this rule was filed November 21, 2014. The proposed amendment would add the topic of water law, rights, and transfer to the list of continuing education core topics. The proposed rule amendment is open for public comment until January 14, 2015.



Commission Considers Additional Mortgage Lending Manager Licensing Method

The Utah Residential Mortgage Regulatory Commission is considering expanding the methods of approval to qualify to take prelicensing education and the Lending Manager (LM) exam, to ultimately become licensed as a LM in Utah. Before discussing the new method being considered by the Commission and Division to become a Utah LM, let's review the two current methods an applicant may now use to qualify to take LM education and exam. Currently applicants to become LMs are required to complete one of two application methods:

1) Submit a LM application with a minimum of three years full-time experience in the past five years originating first lien residential mortgages, and having performed at minimum 45 first lien residential mortgages.

The Mortgage Commission and Division recognizes and appreciates that other associated professional experience might also help to qualify an individual to become a LM. Thus a second application method currently allows applicants to become LMs. The second method waives up to one year of full-time lending experience and lowers the minimum number of first lien residential mortgages performed to 30; by completing other Commission approved alternative experience. The second application method is further described as follows:

2) Having up to one year's full-time experience originating first lien residential mortgages waived by accru-

ing at least 15 additional points by completing approved optional experience; having two years (minimum) full-time experience in the past five years originating first lien residential mortgages; and having originated a minimum of 30 first lien residential mortgages.

Thirty months of full-time experience in the following activities shall be considered equivalent to one year of experience as a first-lien residential mortgage loan originator with possible points accruing at a rate of 0.5 points per month:

- (a) loan underwriter;
- (b) mortgage loan manager;
- (c) loan processor;
- (d) certified mortgage prelicensing instructor; and
- (e) second-lien residential loan originator

The Division process to become a LM has operated under the two methods just described in this article for the past couple of years, however the Commission now contemplates a third qualification method to accommodate individuals functioning as non-originating managers of loan originators who have not been practicing as loan originators for a number of years. Many of these individuals have extensive experience in the mortgage lending industry yet they currently do not qualify to become a LM because they have not originated loans while functioning as a manager, and their experience is too dated. It is this type of scenario that the Commission now seeks to address with a third application method.

The third method is a proposed Administrative Rule amendment which can be found to view and/or comment on at:

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

In brief, this third method requires the following experience in order to qualify to take prelicense education and the LM exam:

3) Submit a LM application with ten years of full time experience providing direct supervision as a loan manager in the residential mortgage industry within the past 12 years;

Provide evidence of having directly supervised during the ten years, no less than five licensed or registered loan originators;

[Note: Although the five individuals licensed or registered described may have changed over time, the number of individuals being managed or supervised by the LM applicant, must have remained at a minimum of five individuals at all times during the ten years and be supported by documentation]; and

The LM applicant must document having personally originated a minimum of 15 first lien residential mortgages within the past 5 years.

In addition to the proposal to add a third method to document the required experience to apply for licensure as a LM, another proposed amendment is being considered for applications under the third option

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for applicants who may wish to pursue the education and testing *prior* to obtaining pre-approval.

LM applicants under this third proposed method may request approval from the Division for approval to take the prelicensing education upon the applicant's affirmation that:

a) the applicant's current employment status could be negatively affected by documenting the applicant's experience;

b) the applicant requests approval to proceed with the prelicensing educa-

tion despite not having documented the necessary experience;

c) the applicant understands that if the Division approval is granted, the applicant assumes the risk of the time and expense of the prelicensing education, testing, and application fee with no assurance that the applicant's experience will qualify the applicant for licensure as a LM, and

d) the applicant would then need to apply for approval prior to requesting the license and have their experience and qualifications determined at that time.

This third proposed method to qualify to take prelicense education and the LM exam addresses those individuals who have extensive industry experience that otherwise are currently precluded from qualifying to become LMs.

Each of the three qualification methods require specific standards that have been determined only after lengthy public commission meetings. Once again, feel free to comment on the proposed adoption of the new rule allowing loan managers with extensive prior experience but little recent experience to qualify to become LMs, at:

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

2014 Instructor Development Workshop Highlights

Division staff started off the annual IDW with several presentations. Division Director Jonathan Stewart spoke on many different topics; including, industry specific legislative updates, and an introduction to the new online application process coming soon for initial applications. Director of Licensing and Education Mark Fagergren spoke on licensing updates in the appraisal, real estate, and mortgage industries. Lastly, Chief Investigator Jeff Nielsen's presentation included information on advertising violations, unlicensed activity, and other enforcement issues.

After Division staff presentations, there was a panel discussion of experts. We were lucky to have Representative and Principal Broker Gage Froerer on the panel as well as a member of our Real Estate Commission (Russ Booth), Appraisal Board Chair (John Ulibarri II), Appraisal Board Member (Daniel Brammer), Division Director, Jonathan Stewart, and Chief Investigator, Jeff Nielsen. They each responded to questions from attendees.

On the afternoon of day one of the Workshop, the Division introduced Karel Murray. Ms. Murray's eager and friendly personality made for a powerful and very humorous demonstration on how to best engage students with a dazzling presentation. Instructors came away with new and innovative ideas on how to be better instructors.

Attendees for the 2014 IDW made the following comments on their evaluations:

"Absolutely love her ability to combine humor with learning/teaching."

"Excellent material and delivery! Thank you!"

"Best classes I've been to!"

"Karel did an excellent job! Her presentation was crammed with apply-able content and yet was not dry or boring. Plus I loved her humor. Bravo!"

"I loved her enthusiasm, energy, and was impressed with her experience and knowledge."

We would like to thank Representative Froerer, industry commission/board panel members, Karel Murray, and the attendees of the 2014 IDW for helping to make this event such a success. We are lucky to have so many educators in the state of Utah that take such a sincere interest in the well-being of our licensees. 

Utah Residential Real Estate Appraisal Fee Study: 2013

By: Barrett A. Slade, PhD, MAI and Professor of Finance at the Marriott School at Brigham Young University

In May 2009, Freddie Mac, the Federal Housing Finance Agency, and the New York Attorney General, jointly issued a document entitled Home Valuation Code of Conduct (HVCC). This document changed the method by which residential real estate appraisal services were procured for secondary mortgage loans by requiring that appraiser selection and mortgage production be separated. This led to significant growth in appraisal management companies (AMCs).

As AMCs became more dominant in the procurement of residential appraisals, so did concerns that AMCs were using their position to compensate appraisers unfairly. This led to inclusion of customary and reasonable fee language in the Dodd-Frank Act. Specifically, the Dodd-Frank Act requires that “lenders and their agents compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the

property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies.”¹

Based on this regulation, the Utah Association of Appraisers commissioned a study to determine customary and reasonable fees for residential appraisals throughout Utah for 2013 by surveying lenders and appraisers. Two separate surveys were prepared, one for lenders and one for appraisers, to capture the unique demographic and background information of each group; however, the questions pertaining to appraisal fees were identical in both surveys. Specifically, both groups were asked to provide their estimate of typical appraisal fees for 2013 for five different appraisal types for properties located in urban, subur-

ban, and rural areas of the 29 counties in Utah.

To support the study, the Utah Division of Real Estate sent email invitations, including links to the surveys, to all licensed and certified real estate appraisers, as well as to all licensed mortgage lenders, four times over an eight-week period. The first email was sent on April 16, 2014, with each succeeding email sent every two weeks. The surveys were closed on June 11, 2014.

Federal regulation pertaining to customary and reasonable fee studies specifically “excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies.” Therefore, the study did not include appraisal fees paid by appraisal management companies to Utah appraisers.

The following table summarizes the principal “statewide” findings of the study including fee comparisons for lenders and appraisers.



¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111 203—July 21, 2010, Title XIV—Mortgage Reform and Anti-Predatory Lending Act, Subtitle F—Appraisal Activities, Section 1472 Appraisal Independence Requirements, (i) Customary and Reasonable Fee.

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Appraisal Form	Location	Overall Median (Lender/ Appraiser)	Minimum Median by County (Lender/ Appraiser)	Maximum Median by County (Lender/ Appraiser)
1004	Urban	\$375/\$400	\$350/\$300	\$450/\$500
1004	Suburban	\$375/\$400	\$350/\$350	\$450/\$500
1004	Rural	\$425/\$400	\$400/\$400	\$487.50/\$525
1004 FHA	Urban	\$410/\$425	\$400/\$350	\$480/\$550
1004 FHA	Suburban	\$410/\$425	\$410/\$400	\$480/\$500
1004 FHA	Rural	\$485/\$425	\$425/\$425	517.50/\$550
1025	Urban	\$500/\$600	\$450/\$300	\$550/\$750
1025	Suburban	\$525/\$600	\$387.50/\$550	\$575/\$725
1025	Rural	\$500/\$600	\$410/\$500	\$550/\$800
1073	Urban	\$350/\$400	\$350/\$350	\$450/\$575
1073	Suburban	\$350/\$400	\$350/\$350	\$450/\$550
1073	Rural	\$425/\$400	\$387/\$400	\$550/\$575
2055	Urban	\$300/\$300	\$100/\$175	\$300/\$400
2055	Suburban	\$300/\$300	\$250/\$300	\$300/\$375
2055	Rural	\$375/\$300	\$175/\$300	\$375/\$500

Form 1004 (full appraisal)

Form 1004 FHA (full appraisal for FHA)

Form 1025 (small residential income property: 1 – 4 units)

Form 1073 (individual condominium unit)

Form 2055 (exterior-only inspection appraisal)

Complete details of the study, including the individual findings for each county, can be found at <http://realestate.utah.gov/documents/UtahResidentialAppraisalFeeStudy.pdf>



Division Question and Answer

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

Submit questions to: DREnewsletter@utah.gov

Q: How can a person be approved to speak before the Mortgage Commission at a monthly meeting?

A: The Division works primarily with three industries, the real estate sales industry, the residential mortgage industry, and the real estate appraisal industry. Each of these industries has an appointed Board or Commission which generally meets once each month. If a comment or suggestion is brought up during the course of a report or discussion, it will be added to the agenda for the following month. No discussion can be taken if the topic is not previously listed on the agenda.

The preparation of the agenda for a Commission or Board meeting begins several weeks or even months in advance. Sometimes a meeting will include one or more matters which are set for hearing at a predetermined time. Not all requests for time to speak before a Commission or Board at a specific meeting can be approved. A licensee who is concerned about his or her individual license or some other matter pertaining to the industry may request to be placed on the agenda for an upcoming meeting. If a request to speak before a Commission or Board is approved, the amount of time for the topic will be limited.

The process is essentially the same to be able to speak before

the Real Estate Commission, the Residential Mortgage Regulatory Commission, or the Real Estate Appraiser Licensing and Certification Board.

The approval process requires the following steps:

1. Contact the Commission/Board secretary, Renda Christensen. Ms. Christensen's email address is rendachristensen@utah.gov.

2. Explain why you want to address the Commission or Board, including a description of the topic you want to address.

All meetings of the Commissions and Board are open to the public. Meetings are generally held on the second floor of the Heber Wells building at 160 East 300 South in Salt Lake City, Utah, near the Division offices. We welcome your attendance and participation at these meetings.

Q: Any chance you can run an article regarding licensing requirements for HOA managers who manage more than one HOA? I'm finding some managers don't understand or know and don't have licenses, thus managing against the law. Not fair for the legal guys!

A: Currently, under Utah state law, when an HOA is formed, there has to be a filing made to the Depart-

ment of Commerce through the Department's Administration Division. This filing is not a requirement of the Division of Real Estate, and, as such, the Division does not review or regulate the filing.

As for the need of any individual or entity to hold a license to operate one or more HOAs, there is no current state requirement to do so by the Division or any other state agency. This is a commonly misunderstood issue.

As a side note, the Division is aware that many people with property management backgrounds act as "Community Managers" and operate one or more HOAs. This does not require a license from the Division. These "Community Managers," even if they hold a license through the Division for other purposes, are not required to hold a license with the Division to run an HOA. The Division has received numerous complaints regarding "Community Managers", but since there is no requirement for licensure through the Division, the Division does not review complaints regarding these "Community Managers".

Some states require a license to operate one or more HOAs. Other states are considering a similar requirement. However, Utah does not currently have this requirement.

Q: I frequently get agents asking me about the process when a complaint is submitted to the DRE regarding

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the possible steps that can be taken, how it is handled by investigators, and what should be expected. Can you explain this process?

A: Absolutely! But a note of caution should be made before delving into a general outline of the process. Each complaint or case is fact specific, so the way one case may be handled in regard to one situation may not apply to a case that appears to be similar in nature, but contains a different fact pattern. Also, depending on what the Division is provided or learns during the course of gathering facts may alter the process or cause steps to be necessarily changed. With that in mind, below is a general outline of how a complaint is handled by the Division.

The first step in the process generally involves information being sent to the Division in the form of a complaint. This can be through a letter, email, telephone call, or through the actual completion and submission of the Division's complaint form. Though not required specifically, it is generally most helpful if a complaint form is completed and submitted to the Division. Regardless, the Division will generally need the individual filing a complaint to also provide any relevant documents to support the allegations made to the Division.

As a side note, not all complaints are brought to the Division by a third party person or entity. The Division can, and has, opened a number of cases without having received a specific complaint from an individual. For instance, if the Division learns of violations by other people while reviewing a compl-

aint, the Division may decide to open a separate complaint. Also, the Division may gather information through undercover communications and may open cases based on the information obtained through that process.

When the Division receives a complaint, it is first handled by the Division's Enforcement Secretary to be assigned a case number and to be entered into the Division's system. Once this has occurred, complaints are reviewed by the Chief Investigator. The Chief Investigator reviews complaints to ensure that the alleged violations are in fact potential violations of the Division's statutes or rules, and to ensure that the complaint subject matter is under the jurisdiction of the Division.

For instance, complaints about ethics violations and commission disputes are not under the Division's jurisdiction specifically. Complaints of this nature will be reviewed to ensure that there may not also be a separate violation of the Division's statutes or rules. Complaints that do not allege facts that may be a violation of the Division's statutes or rules are closed with no further action taken and the complainant is sent a letter discussing other courses of action the complainant may pursue.

If the Chief Investigator believes the allegations point to potential statute or rule violations, the case will be assigned to an investigator. Due to the number of complaints filed with the Division and other factors, such as current case load of investigative staff, complaints may not be as-

signed to an investigator right away.

Prior to an investigator being assigned, the Division may contact various parties, including the Respondent (the person who is alleged to have violated statutes or rules) for documentation to assist in either helping to determine whether a case should be assigned, or to get some of the necessary documents for review in advance of assigning an investigator.

Once a complaint is assigned to an investigator, the investigator generally will contact the various parties, including the complainant, third party witnesses (e.g. brokers, other agents, appraisers, other clients, etc.), and the Respondent(s) to interview, gather documents, etc. Depending on the case allegations or other factors, a Respondent may not be contacted until near the end of the fact gathering process.

Once an investigator has gathered and reviewed the relevant facts in a case, the investigator will draft a report summarizing the facts. This report is reviewed by the Chief Investigator for determination as to whether statute or rule violations appear to have occurred. If the Chief Investigator determines there are no violations, the case will be closed with no action taken. Cases may also show problems that do not necessarily rise to the level of warranting action. If so, the Division may provide feedback to Respondents and warn them about future violations based on those concerns.

If a complaint summary is reviewed and it appears there may be violations by a Respondent, the case will be referred to one of the Assistant Attorney Generals that represent the

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Division in administrative actions. Once this occurs, the case will either eventually be brought before the respective Commission or Board for a hearing, or the Chief Investigator or Assistant Attorney General may settle the matter through a stipulated agreement with the Respondent.

A few things should be noted about this process as well. First, the Division will not generally provide up dates on a complaint to the parties. An investigator on a case by case basis may provide very general updates to a complainant, but this is

Second, the Division will at the very least notify the relevant parties of the outcome of the complaint. If the complaint is closed before it is assigned to an investigator, the Respondent may never know the complaint was filed, as the Division will not notify Respondents of the complaint if the Division had not contacted the Respondent by that time.

Third, information submitted to the Division is generally classified as a protected under the state's GRAMA statutes (Government Records Access and Management Act). As such, information provided to the Division will not be provided to or

otherwise released as evidence during the hearing process. For licensees, this means that the Division will not provide you with information or a copy of any complaint when requesting information. Even though Respondents want to know the basis of a complaint, if they do not know already, the Division will not release that information unless or until it is appropriate to do so.

As stated, this is a general idea of how the complaint process goes from its start until action is taken. Hopefully this is helpful to our licensees to understand what to expect when filing a complaint or having a complaint filed against them.

Mortgage Renewal 2014 is Now History!

We made it through another renewal and time seems to be making it easier on all of us as we learn the NMLS system and adapt to the changes. This year all mortgage licensees were required to complete an additional 2 hours of Utah Law as part of their continuing education requirement. Utah mortgage regulators have been very pleased to see the number of licensees who completed this requirement in a timely manner and then requested and paid for their renewal. At the time of this writing 78% of our licensees have requested their renewal and 71% have been approved. There are 708 who have not had their renewal approved yet pending the clearing of deficiencies on their license. If you have not received an email confirmation through the NMLS system that your license renewal is approved and you requested it more than a week ago, please log into your filing and see if there are deficiencies on your license, license items that are holding up the approval. If you requested your renewal prior to the December 31, 2014 deadline, you can continue to use your license in its current status while we process the approvals for your license. In addition to receiving a confirmation email from the NMLS stating that your renewal has been approved, you will also receive an email from the Division of Real Estate with your Mortgage license attached. You can print this off at your convenience.

For those who have not received an approved renewal email, please check your NMLS filing in the following manner. Log in to your NMLS account and under "composite view" click on "license/registration status" and then you can click on "license items." Generally, there are corrections or additions required on your filing that you can take care of fairly easily. Mostly they are for updating your employer history, completing the Utah two-hour CE course, or providing required documentation. If you see a deficiency for failure to complete the Utah two-hour Law course, and you know you completed it, you can email or fax a copy of your certificate of completion and we can get the deficiency cleared and your license renewed quickly. Email to: realestate@utah.gov or fax to 801-526-4382.

If you find that you have not requested renewal prior to the end of the year and you still wish to maintain your mortgage license, you can reinstate your license during the 58 days prior to February 28, 2015. You will still need to complete the continuing education requirement in addition to the 2014 Late CE and the Utah two-hour Law course. Request your renewal through the NMLS, and pay the renewal fee and the **late fee**. There is an additional **\$50 late fee** for this reinstatement. If you completed your CE prior to the end of the year, but did not request renewal, you will not need additional CE, you will just need to request and pay the renewal and late fee through NMLS prior to February 28, 2015.

Note the importance of the February 28, 2015 deadline. After that date, licensees who wish to reinstate their license will have additional requirements and additional fees.

Fourth 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 or currently under appeal.

To view entire stipulations and/or orders search here:
<http://realestate.utah.gov/actions/index.html>

APPRAISAL

MILLER, DAVID G., Farmington, certified residential. In a stipulated order dated September 24, 2014, Mr. Miller admitted to several errors in the appraisal of a property such that the series of errors in the aggregate affects the credibility of the appraisal results in violation of Utah law and USPAP, even though the errors individually might not significantly affect the results of the appraisal. Mr. Miller agreed to pay a civil penalty of \$1,500 and to take the 15 hour USPAP course. Case number AP-12-60860

MORTGAGE

CASTLE & COOKE MORTGAGE, LLC., Salt Lake City, mortgage entity. In a stipulation and order dated October 1, 2014, Castle & Cooke was alleged to have committed false and misleading advertising. Castle & Cooke did not admit the violations but agreed with the Division to resolve the matter through stipulation. Castle & Cooke agreed to pay a civil penalty in the amount of \$10,000 and to update the answers on its disclosure form to the nationwide database. Case num-

ber MG-13-64303

TODD H. WHITAKER, Salt Lake City, mortgage loan originator. In an order dated October 20, 2014, the Utah Residential Mortgage Regulatory Commission denied Mr. Whitaker's application for licensure as a mortgage loan originator after determining that Mr. Whitaker failed to demonstrate the financial responsibility, moral character, integrity, truthfulness, and competence required for licensure. The Commission's decision relied upon the facts that Mr. Whitaker had been convicted of communications fraud, had unsatisfied civil judgments, tax liens, and a child support delinquency, and previously had his mortgage license revoked although the revocation was subsequently converted to a suspension. Case number MG-14-72272

NETWORK CAPITAL FUNDING CORPORATION, Irvine, CA, mortgage entity. In an order dated November 24, 2014, Network Capital's application for renewal was granted and placed on probation due to allegations by the regulatory authorities of several states seeking disciplinary action against Network Capital's licenses in those other states. Network Capital has not admitted the alleged violations. Case number MG-14-73742

NGUYEN, TRI MINH, Irvine, CA, lending manager. In an order dated November 24, 2014, Mr. Nguyen's application for renewal of his lending manager's license was granted and placed on probation due to allegations by the regulatory authorities of several states seeking disciplinary action against his licenses in those other states. Mr. Nguyen has not admitted to the alleged violations. Case number MG-14-73729

REAL ESTATE

ANDEREGG, JULIE, Lehi, sales agent. In a stipulated order dated November 19, 2014, Ms. Anderegg admitted to acting as a sales agent while not affiliated with a principal broker in violation of Utah Code 61-2f 401(3)(a). Ms. Anderegg agreed to surrender her license in lieu of the filing of a complaint and the holding of a hearing. Case number RE-13-64005

ATKIN, RANDY, Salt Lake City, sales agent. In a November 28, 2014, order, Mr. Atkin's license was renewed and placed on probation for the renewal period due to his criminal history. Case number RE-14-73860

AULT, ANITA, Elk Ridge, associate broker. In a stipulated order dated November 19, 2014, Ms. Ault admitted to having failed to report a conviction for misdemeanor theft to the Division within ten business days in violation of Utah Code 61-2f 301(1)(a)(ii). Ms. Ault agreed to pay a civil penalty of \$250 for the violation. Case number RE-14-72908

BAILEY, JILL, St. George, sales agent. In an October 31, 2014, order, Ms. Bailey's license was renewed and placed on probation for the renewal period due to her criminal history. Case number RE-14-73387

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BARKER, R. PAUL, Scottsdale, AZ, principal broker. In a stipulated order dated November 19, 2014, Mr. Barker admitted to having failed to exercise active supervision over the conduct of a licensee affiliated with him, having failed to maintain and safeguard documents, and having failed to obtain informed written consent in order to represent both principals in a transaction as a limited agent. These actions were violations of Utah Code and Utah Administrative Code. Mr. Barker agreed to pay a civil penalty of \$20,000, complete eight hours of continuing education, hold four hours of mandatory training in dual agency and record keeping, and implement policy requiring broker approval of any dual agency representation. Case number RE-14-70223

BOWERS, KIMMIE, Murray, sales agent. In a stipulated order dated September 17, 2014, Ms. Bowers admitted to having failed to report a plea in abeyance within ten business days of entering the plea agreement as required by law. However, Ms. Bowers did disclose the plea agreement in her application to renew her license. Ms. Bowers agreed to pay a civil penalty of \$250 and to have her license placed on probation for the renewal period. Case number RE-14-72119

BRIGGS, WAYNE, St. George, sales agent. In an October 23, 2014, order, Mr. Briggs's application for licensure as a sales agent was denied. The Commission determined that Mr. Briggs did not meet the qualifications for for

licensure due to a previous sanction of his license to practice as a mortgage loan originator. Mr. Briggs has not complied with the conditions of the previous sanction and did not disclose the previous sanction in his application for licensure as a real estate sales agent. Case number RE-14-71747

CUTLER, DARCI, Salt Lake City, sales agent. In a stipulated order dated September 17, 2014, Ms. Cutler admitted to having failed to disclose criminal history in her application for licensure as a sales agent. Ms. Cutler agreed to pay a civil penalty of \$500 and to have her license placed on probation for the initial licensing period. Case number RE-14-72350

FARLEY, CHRISTOPHER, West Valley City, sales agent. In a stipulated order dated October 15, 2014, Mr. Farley admitted to having failed to disclose criminal history in his application for licensure as a sales agent. Mr. Farley agreed to pay a civil penalty of \$500. Case number RE-14-72907

FORMBY, PAMELA, Draper, sales agent. In a November 28, 2014, order, Ms. Formby's license was renewed and placed on probation for the renewal period due to her criminal history. Case number RE-14-73848

HAUPPA, AMY MARIE, West Valley City, sales agent. In a stipulated order dated November 19, 2014, Ms. Hauppa admitted to having failed to disclose criminal history in her application for licensure as a sales agent. Ms. Hauppa agreed to pay a civil penalty of \$500. Case number RE-14-72983

HENSLEY, RYAN LLOYD, Midvale, sales agent. In an October 9, 2014, order, Mr. Hensley's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-14-72787

HILL, DEANNE, Orem, sales agent. In an October 27, 2014, order, Ms. Hill's license was granted and placed on probation for the initial licensing period due to her criminal history. Case number RE-14-73273

HUNTER, JONATHAN, Saratoga Springs, sales agent. In an October 31, 2014, order, Mr. Hunter's license was granted and placed on probation for the pendency of court proceedings in a criminal matter. Case number RE-14-73386

JENSEN, LEANNE C., Taylorsville, sales agent. In a stipulated order dated October 15, 2014, Ms. Jensen admitted to having failed to disclose criminal history in her application for licensure as a sales agent. Ms. Jensen agreed to pay a civil penalty of \$500 and to have her license placed on probation for the initial licensing period. Case number RE-14-72406

KELLY, ROBERT D., Mountain Green, sales agent. In a stipulated order dated October 15, 2014, Mr. Kelly admitted to having violated Utah law by accepting compensation from a principal broker with whom he was not affiliated. Mr. Kelly had attempted to change his affiliation to his new broker but had failed to properly complete the process. Mr. Kelly agreed to pay a civil penalty of \$750 and to take three hours of additional continuing education. Case number RE-13-63993

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KOENIG, KARL, Bountiful, sales agent. In a November 7, 2014, order, Mr. Koenig's license was renewed and placed on probation for the renewal period due to his criminal history. Case number RE-14-73528

LARSEN, AUTUMN, Layton, sales agent. In an October 21, 2014, order, Ms. Larsen's license was granted and immediately suspended for 30 days. Following the suspension her license was placed on probation for the remainder initial licensing period. These actions are due to her criminal history and her failure to report one of the prior criminal cases. Case number RE-14-73088

LARSEN, PETER M., Lehi, sales agent. In a November 13, 2014, order, Mr. Larsen's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-14-73589

LINDSEY, JOSHUA, Salt Lake City, sales agent. In an October 31, 2014, order, Mr. Lindsey's license was granted and immediately suspended for three months. Following the suspension, Mr. Lindsey's license will be placed on probation for the remainder of the initial licensing period due to his criminal history and his failure to disclose his criminal history in his license application. Case number RE-14-73370

LONDON, PERGINIA., Draper, sales agent. In a stipulated order dated March 19, 2014, Ms. London admitted that she failed to disclose criminal history in her

application for licensure. Ms. London agreed to pay a civil penalty of \$500. Case number RE-14-69476

NEUMEIER, NADEZHDA, St. George, associate broker. In an order dated November 12, 2014, Mr. Neumeier's license was granted and placed on probation for the pendency of court proceedings in a criminal matter. Case number RE-14-73588

NICOLAIDES, MICHAEL JAMES, West Bountiful, sales agent. In an October 2, 2014, order, Mr. Nicolaides's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-14-72754

NIELSEN, MATTHEW, Salt Lake City, sales agent. In a stipulated order dated October 15, 2014, Mr. Nielsen admitted to having failed to disclose criminal history in his application for licensure as a sales agent. Mr. Nielsen agreed to pay a civil penalty of \$250. Case number **RE-14-72906**

NIUMEITOLU, DAVID T., Sandy, sales agent. In a November 10, 2014, order, Mr. Niumeitolu's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-14-73537

PHELAN, THOMAS, Salt Lake City, sales agent. In a November 28, 2014, order, Mr. Phelan's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-14-73862

POPE, LONDON, Sandy, sales agent. In an October 23, 2014, or-

der, Mr. Pope's license was granted and immediately suspended for failing to disclose criminal history on his license application. In a November 21, 2014, the suspension of Mr. Pope's license was lifted. Case number RE-14-73191

POTTER, EDWARD R., West Jordan, sales agent. In a November 28, 2014, order, Mr. Potter's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-14-73864

PRYOR, COLE, Cedar City, sales agent. In an October 9, 2014, order, Mr. Pryor's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-14-72909

SKINNER, HEIDI L., St. George, sales agent. In a stipulated order dated October 15, 2014, Ms. Skinner admitted to several advertising violations on her websites and on KSL Classified's website. Ms. Skinner agreed to pay a civil penalty of \$750 and to have her license placed on probation for the initial licensing period. Case numbers RE-13-64456, RE-13-64810, and RE-14-69842

WALLACE, HAROLD, St. George, sales agent. In a September 5, 2014, order, Mr. Wallace's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-14-72289

WEILACHER, SCOTT M., Bluffdale, sales agent. In a stipulated order dated October 15, 2014, Mr. Weilacher admitted to

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having failed to disclose criminal history in his application for licensure as a sales agent.

WESTON, ADAM, Saratoga Springs, sales agent. In a stipulated order dated November 19, 2014, Mr. Weston admitted to an advertising violation after having placed a “For Sale” banner on a home. The advertisement did not contain the name of Mr. Weston’s brokerage. Mr. Weston agreed to pay a civil penalty of \$150. Case number RE-14-71662

WHITAKER, BRETT D., Logan, principal broker. In a November 7, 2014, order, Mr. Whitaker’s license was renewed and placed on probation for one year due to the sanction of his real estate license in Idaho. Case number RE-14-73530

WILEY, VICKY, Washington, sales agent. In a stipulated order dated November 19, 2014, Ms. Wiley admitted to several violations over the course of fifteen transactions. The violations were failing to execute written agency agreements, failing to obtain written informed consent required to represent both parties to a transaction, and utilizing outdated listing agreements. Ms. Wiley agreed to pay a civil penalty of \$10,000, complete 20 hours of additional continuing education, and to have her license placed on probation for one year. Case number RE-13-66582

WILKING, KATIE, Arlington, VA, sales agent. In a September 5, 2014, order, Ms. Wilking’s license was renewed and placed on pro-

bation for one year due to the sanction of her real estate license in Virginia. Case number RE-14-72296

WINDER, CLAY H., Orem, associate broker. In a stipulated order dated March 19, 2014, Mr. Winder admitted to several advertising violations on his websites and on several social media websites. The advertisements did not meet code requirements relative to brokerage information and text size. Mr. Winder agreed to pay a civil penalty of \$450. Case number RE-13-66266



THANK YOU