

## Fourth Quarter 2018

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## Director's Message

### EDUCATE YOURSELF

Recently as I was preparing my presentation for our annual Instructor Development Workshop, I asked our staff to compile common questions they receive when licensees call the Division. When I was finally given the list, I was surprised by the basic nature of some of the questions. Here are some examples:

1. What name should I use for advertisements?
2. Can my spouse who has an inactive license show houses for my clients?
3. When is limited agency disclosure needed?
4. When does an agent need buyer agency?
5. Do business cards need to have the brokerage name on them?
6. If I get a dual broker license, what am I responsible for at the property management company?
7. As a Commercial Sales Agent, do I need a listing agreement?
8. Can I pre-list a property before getting a listing signed by the sellers?

You may look at this list of questions and say to yourself, "I know the answer to all of these questions." The phone calls the Division receives are a small sample size and are not representative of the industry as a whole, and of course we are always happy to answer all kinds of questions, no matter how basic. However, this experience reminded me that we all need to be aware of the areas where we could improve our knowledge and understanding. If there is something about your industry that you do not understand or are unsure of, what steps do you take to educate yourself? May I suggest a few?

For those in the real estate and mortgage industries, speak to your principal broker or principal lending manager. Remember, Principal Brokers have a duty to exercise reasonable supervision



Jonathan Stewart

# Division of Real Estate

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over licensed and unlicensed staff members (61-2f-401(14)). Similarly, Principal Lending Managers are subject to discipline for failing to exercise reasonable supervision over the activities of unlicensed staff or a mortgage loan originator affiliated with the lending manager (61-2c-301 (1)(q)). These are professionals who have received extra training to hold the licenses they have, and they have experience and knowledge that can and should be shared with those they supervise. For those who are members of a Realtor® association, utilize the legal hotline that is available to you. Call the Division of Real Estate and speak to one of our investigators. Select continuing education on topics that interest you, on subjects you don't understand completely, or things that come up often in your area of practice. And finally, refer to and understand the statutes and rules.

There are certain sections that licensees could benefit from reading occasionally. These sections are as follows:

## **Real Estate**

**[61-2f-401 Grounds for Disciplinary Action](#)**

**[R162-2f-401a Affirmative Duties Required of All Licensed Individuals](#)**

**[R162-2f-401b Prohibited Conduct as Applicable to All Licensed Individuals](#)**

**[R162-2f-401c Additional Provisions to Brokers \(If you are a Broker\)](#)**

**[R162-2f-401j Standards for Property Management \(If involved in PM\)](#)**

**[R162-2f-401l Gifts and Inducements](#)**

**[R162-2f-403a Trust Accounts – General Provisions \(If you are a Principal Broker\)](#)**

**[R162-2f-403b Real Estate Trust Accounts \(If you are a Principal Broker involved in sales\)](#)**

**[R162-2f-403c Property Management Trust Accounts \(If you are a Principal Broker in PM\)](#)**

## **Mortgage**

**[61-2c-301 Prohibited Conduct – Violations of the chapter](#)**

**[R162-2c-301a Unprofessional Conduct](#)**

## **Appraisal**

**[61-2g-401 State-Certified and State-Licensed Appraisers – Restrictions on Use of Terms](#)**

**[–Conduct Prohibited or Required –Trainee](#)**

**[61-2g-403 Professional Conduct – Uniform Standards](#)**

**[R162-2g-311 Scope of Authority](#)**

**[R162-2g-502a Standards of Conduct and Practice](#)**

**[R162-2g-502b Prohibited Conduct](#)**

Of course there are other sections that would be helpful, but these are the sections that you may want to consider reviewing regularly to ensure understanding and to protect yourself.

Educating yourself will help you avoid regulatory and legal liability, but the main benefit you gain through education is the improved service you offer to your clients. The greater your understanding of your industry, the better you are able to serve your clients and grow your business.

Please be aware of the areas you may need to understand better and be willing to share your knowledge with others so that everyone can better serve the public.

Thank you for all you do for the real estate industries in the State of Utah. I wish you all a safe and successful 2019.



# Division of Real Estate

## MORTGAGE LICENSE RENEWAL 2018-2019

The year 2018 has come to an end, and so too has the mortgage license renewal procedure for 2019. This year, in addition to the Utah specific requirement of the 2-hour Utah Law Course, mortgage loan originators (MLOs) that were licensed between May 8, 2017 and December 31, 2017 are required to complete the new 5-hour Utah MLO Course before they can renew their MLO license for 2019. The 2-hour Utah Law Course and the 5-hour Utah MLO Course (for those licensed between May 8, 2017 and December 31, 2017) are in addition to the 8 hour NMLS CE required nationally for all renewing mortgage licensees. For the first time, both the 2-hour Utah Law Course and the 5-hour Utah MLO Courses were tracked through the NMLS.

The 2019 renewal cycle went smoothly with relatively few individual and industry phone calls, e-mails, and live chats regarding state specific renewal requirements. At the time of this writing 77.1%% of our licensees have requested renewal and 97.5% have been approved. There are 142 applicants who have not had their renewal approved yet.

**Due to the fact that the NMLS now tracks the 2-hour Utah Law Course, and the 5-hr Utah MLO Course, the Division (DRE) license renewal process has been significantly streamlined which has resulted in a substantial overall reduction in license processing times.**

If however, you have not received an email confirmation through the NMLS system that your license renewal is approved and you requested renewal more than two weeks ago, please log into your NMLS account and see if there are deficiencies on your license (license items) that are holding up the approval. If you requested renewal prior to the December 31, 2018, deadline, you can continue to use your license according to your license status as of the day you requested your renewal in the NMLS, while we review your application. 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 (please allow up to 10 business days from the day your renewal is approved to receive the DRE email). You may print your license at your convenience.

For those who have not received an email indicating that your renewal has been approved, please check your NMLS account in the following manner. Log in to your NMLS account: Under "composite view," click on "license/registration status," and then click on "license items" next to your Utah License. Generally, there are corrections or additions required in your NMLS account that you can take care of fairly easily. Mostly, they are for updating your employer history, or failing to autho-

size or provide required documentation.

**If you failed to request your renewal before year end, you should immediately discontinue any activity that requires a mortgage license until you have a renewal approved by the Division. You will need to submit a late renewal application before February 28, 2019.**

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 prior to February 28, 2019. You will need to complete the continuing education requirements, the 2018 Late CE, the 2-hour Utah Law course, and the 5-hr Utah MLO course for those who received their initial Utah MLO license between May 8, 2017 and December 31, 2017, request your renewal through the NMLS, pay the renewal fee and a **\$50 late** fee. 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 renewal and pay the renewal and late fee through NMLS prior to February 28, 2019.

*Please note the importance of the February 28, 2019 deadline. After that date, licensees who wish to reapply for a Utah mortgage license will need to meet all requirements for a new license. If you have questions please contact the Utah Division of Real Estate at (801) 530-6747.*

## Appraisal Regulatory Conferences

### - National Trends, Thoughts, and Perspectives -

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Recently the Division sent representatives to the October Appraisal Standards Board meeting and the fall Conference of the Association of Appraiser Regulatory Officials (AARO). Presenters at these two events included these and other highly regarded presenters:

David S. Bunton - President & CEO of the Appraisal Foundation

John S. Brenan - Director of Appraisal Issues for the Appraisal Foundation

Margaret Hambleton - Chair of the Appraisal Standards Board

Jim Park - Executive Director of the Appraisal Subcommittee

Carmen Holly - Senior Supervisory Financial Analyst at Federal Reserve Board

Lyle Radke - Director of Fannie Mae's Collateral Policy and Strategy Team

Steve Corbin - Director of Valuation in the Single-Family Risk Management Space at Fannie Mae

Brief highlights and notes of their presentations are now offered.

Significant and multiple discussions occurred regarding whether appraisers can or should be able to perform "evaluations" with or without complying with the Uniform Standards of Appraisal Practice (USPAP).

Note: In Utah evaluations are currently allowed to be performed by non appraisers in the market place. However, existing Utah law restricts the use of Evaluations for internal company use and not for lending purposes where such loans may potentially be sold on the secondary market. In fact, many lenders do utilize evaluations for lending purposes. Discussions on evaluations are ongoing between the Division and the Utah Appraisal Board including whether Utah appraisers should be able to perform such evaluations without complying with USPAP as Licensed and Certified Appraisers are the most qualified individuals to render a competent opinion of real property value.

At the conference, a discussion took place about having more standardized methods and processes for disputing an appraisal

report. Presenters suggested that best practices should allow for the correction of errors in appraisals. When markets slow down the industry generates more requests for reconsideration of opinions of value.

Presenters recapped the national reduction in appraisal qualification requirements that happened on May 1, 2018. The new standard reduces the college education and experience requirements for Licensed and Certified Residential appraiser candidates. The speaker expressed the view that these experience reductions did not occur in response to, or as a result of, the supply and demand issues that have been reflected nationally in declining appraiser numbers. The Appraisal Qualifications Board does not believe that appraisers licensed under the current criteria are any less qualified than appraisers who qualified before these reductions.

Nationally, the number of newly Licensed and Certified Residential appraisers has increased significantly (60%) when compared to the numbers for calendar year 2015.

Attendees at the conference were told to anticipate that Practical Ap-

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plications of Real Estate Appraisal (PAREA) Training Courses will be developed by the Appraisal Foundation in the next year or two, as an alternative to the long standing and exclusively utilized Trainee/Supervisor mentorship training model. When developed and available, the alternative PAREA Courses will be able to be completed for up to 75% of the residential experience required for Licensed or Certified Residential appraisers. Candidates will still need a Certified Supervisor for 25% of their residential experience. Content outlines have already been developed for these PAREA Courses and we can expect an exposure draft on these courses "mid next year."

Projected Advantages for Appraiser Candidates Completing PAREA Training verses the current Trainee/Supervisor Mentorship System:

PAREA Training will not be limited to a single Supervisors personal knowledge and their Market Niche;

PAREA Candidates will be exposed to and learn to appraise a broader variety of properties than most current Trainees; and

PAREA Training will provide greater Consistency to appraiser candidates.

By June 4, 2020, Appraisal Management Companies (AMCs) must be added to the National Registry by all States. AMC disciplinary actions will then be reported by States to the AMC Registry within 5 days. AMCs will be charged or assessed a registry fee of \$25 for each appraiser panel member who performs a covered transaction over an established 12 month period.

The conference included several presentations and discussions of "Bifurcated or Hybrid Appraisals." Bifurcated or Hybrid appraisals are appraisals which include third party participation or assistance (such as in performing property inspections or providing sketches). Bifurcated appraisals would be a "step up" from a drive by appraisal and would most likely be utilized for "low risk loans" or home equity loans. If an inspection is "out sourced" the Appraiser has an obligation to ensure the competency of the inspector. The competency of Bifurcated appraisal work cannot be merely assumed. The appraiser must verify or confirm that the out sourced data is credible and reliable, use an extraordinary assumption, or withdraw from the assignment. In a Bifurcated or Hybrid appraisal report, it is necessary to include the complete scope of assistance and full disclosure in the appraisal report so as to not be misleading to the intended users of the report. The main advantage of Bifurcated ap-

praisals is speed. They can potentially shorten the length of time to complete an appraisal.

To a certain extent appraisers already rely on third party information providers such as Multiple Listing Service information, lenders, Trainees, governments, public records, plans & specifications, surveys, home owners, real estate agents, other appraisal reports, etc.

In addition, there was a recommendation that appraisal candidates who perform Centrally Assessed Properties be required to complete additional requirements in order to ensure their competency in USPAP Standards 1 and 2. The Division, the Utah Appraisal Board, and the Mass Appraisal industry are currently working together to suggest such adjustments.

On a totally different note, the Governor of North Dakota has requested an appraiser qualification waiver from the Appraisal Foundation due to insufficient numbers of appraisers in his state.

This much abbreviated synopsis of presentations is intended to shed light on some of the significant topics of discussion that would be of general interest to appraisers, appraiser candidates, and affiliated industry professionals.

## The Wholesaling Debacle

By Chris Martindale, Real Estate Investigator

Imagine if there was a way to bring a buyer and a seller together, with the expectation of receiving valuable consideration, but without obtaining a license. And, imagine if there was a way to conduct a real estate transaction as a licensee that allows the licensee to avoid following statutes and rules in that transaction. "Wholesaling" through assignable purchase contracts is the process by which this very thing is taking place. Those engaged in this practice argue this to be a legitimate and legal way of practicing real estate. Regulators across the country are cracking down on this practice. In many states, action is being taken against licensees who do not follow their state's statutes and rules when involved in wholesaling. Utah is one of these states.

A previous issue of the Division's quarterly newsletter included an article that addressed Assignment of Purchase Contracts. This article can be viewed [HERE](#) on page 6. The article addressed the use of Assignment of Purchase Contracts and the practice of "Wholesaling" properties. While it is not unlawful to assign a contract to a new buyer when you

have a property under contract, the use of assignment contracts is sometimes being used for reasons other than their intended purpose.

In recent months, the Division of Real Estate has seen an increased trend in which both licensees and non-licensees are submitting offers on properties for the purpose of marketing and re-assigning the purchase contract to a third party for a fee. That is, they have approached the seller representing that they are a "buyer" and offering cash to that seller. Once the seller accepts the offer, the purchase contract (and property) is marketed to a third party such as an investor looking to flip a home. The "buyer" then assigns the contract to the third party for an assignment fee. We have seen these fees go as high as the equivalent of a 30% commission at or after closing. It's fast, it's easy, and it's lucrative. There are just ...well... several problems. Let's start with the unlicensed persons.

When an unlicensed person puts a property, or several properties, under contract for the purpose of selling those purchase contracts for a profit, they are in essence

acting as a real estate agent. They are bringing a buyer and a seller together with the expectation of receiving valuable consideration. Utah Code 61-2f-102 (20)(a) defines in part a Principal Broker as an individual who sells or lists for sale real estate, including real estate being sold as part of a foreclosure rescue, or a business opportunity with the expectation of receiving valuable consideration. The contracts used in these transactions are often simple two page contracts that allow the "buyer" to market the property to another party while the property is under contract. It is legal to assign a contract; however, when this process becomes a business model for an unlicensed individual to bring buyers and sellers together for compensation, the person is practicing real estate without a license. Often times those engaged in this practice believe that having a valid purchase contract as a "buyer" gives them an ownership interest in the property, and therefore, they are exempt from the Division's licensing laws. This is not accurate; they may have an interest in a purchase contract, but they do not have an ownership interest in the property and are therefore not exempt from

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real estate licensing laws under the owner exemption. When the pattern described becomes a business model, the Division views this conduct as unlicensed real estate sales activity.

Now, let's look at licensed individuals in the same scenario. A licensee offers to purchase a property. The licensee is under contract as the "buyer" and the contract is marketed to a third party and an assignment fee is collected at or after closing.

The Division has the following concerns: Is the licensee taking advantage of the public? Is there full disclosure from the licensee? Does this business model have an element of misrepresentation or deception in it? Was there full and complete disclosure from the buyer (the licensee) to the seller? There are times when the buyer (who is licensed) discloses that they are a licensed real estate agent purchasing this property on their own behalf, and that they only represent themselves in this transaction. However in many instances the purchase contract authorizes the licensee/"buyer" to market the property which potentially creates a limited agency situation while the licensee is a principal in the transaction. This clearly poses another problem, how can a licensee as the buyer act in a neutral capacity with the seller while at the same time nego-

tiating a transaction fee for a second buyer to purchase the property? Simply put...they can't. To do so is a violation of Utah law.

Licensees should be aware that acting on their own behalf in a real estate transaction does not exempt you from the real estate statute and rules. A licensee involved in "wholesaling" properties cannot represent the seller in the transaction when the licensee has an interest in the purchase contract as the buyer.

Listed below are a few statutes and rules the Division find licensees violating when conducting business in this manner.

-Using state approved forms. §61-2f-306 (1).

-Obtaining written permission to market the property. §R162-2f-401b (17)(a).

-Establishing and defining in writing the licensee's scope of agency. §R162-2f-401a (2)

-Confirming the prior agency disclosure in the currently approved Real Estate Purchase Contract... §R162-2f-401a (10)(a)

-Disclosing the licensee's status as a licensee. §R162-2f-401a (6)(b).

-Disclosing that the licensee is a principal in the transaction. §R162-2f-401a (6)(a).

-Disclosing additional compensation and ensuring that the compensation is paid to the principal broker. §R162-2f-401a (16)(a)(b).

-Disclosing the licensee's brokerage on all advertisements. §R162-2f-401h (1)(2).

-In the case of a principal or branch broker, reasonable supervision over the activities of licensed or unlicensed staff must be exercised. §61-2f-401 (14).

We remind licensees that there is a legitimate use for Assignment of Interest Addendums. However, if that addendum, or if an assignable purchase contract is used in a transaction for the purpose of evading the statutes and rules, or avoiding obtaining a real estate license, these circumstances will be reviewed by the Division of Real Estate for possible violations. We have seen an increasing number of complaints involving this practice and we encourage anyone aware of this activity to report it to the Division. Let's work together to protect the public and promote responsible business practices.

## Why Appraisers Matter

Originally published in the September - October 2018 edition of REALTOR® Magazine

Written by John S. Brennan

Because you may be reading this on a laptop, tablet or smartphone, you already know that today we use technology in ways we never imagined even a few years ago. Who could have dreamed of ordering something online and having it delivered within hours? Now we're anticipating deliveries via driverless cars and flying drones.

With these advances, will computers inevitably replace appraisers when it comes to valuing homes? That question is a subject of much debate. In some limited transactions, an automated valuation model may be used appropriately today instead of an appraisal. Based on the specifics of the property and the transaction details, an appraisal may be unnecessary. For example, I'd be irate if I owned a \$2 million home free and clear but had to pay a large fee for an appraisal in order to take out of \$50,000 line of credit. However, if I'm looking to buy a \$500,000 home with 10 percent down, is it reasonable for a lender to rely on artificial intelligence to determine whether the collateral is adequate? Not likely.

I couldn't agree more with the sentiments of Karen Belita, a data scientist with the National Association of REALTORS®, who wrote in a blog post, "When it comes to online home value estimates, the number

on caveat for consumers is that these estimates are not a substitute for formal appraisals, comparative market analyses, and the in-depth expertise of real estate professionals." Bravo. Indeed, AVMs are not appraisals. It's possible that as technology evolves, AVMs may be used to a greater degree. But today, in many cases, an automated valuation is suspect if there is a lack of available data or the property isn't a "cookie cutter." Many of us have checked our own properties against the finding of an AVM and thought, "Yeah, right." When it comes to AVMs, your mileage may vary.

So why aren't automated models more reliable in more transactions? Because computers don't buy houses; people do. An AVM does a great job of analyzing tangible features such as a property's age, number of bedrooms and baths, square footage and lot size. However, a property's overall appeal is something that has been, at least to date, extremely difficult to quantify. It's a uniquely human phenomenon; a property's overall appeal reflects a combination of characteristics. While not everyone has the same preferences, some unusual features will likely face significant market reluctance.

But wait, you say, aren't appraisers required by the Uniform Stan-

dards of Professional Appraisal Practice to be "independent, impartial, and objective"? Absolutely. Still, appraisers are not machines. They must have relevant data and logic to support their analyses, opinions, and conclusions, but they also incorporate the concept of market value reflecting the interests of consumers who are "typically motivated" and "well-informed."

Recognizing that AVMs play a role in developing an appraisal, the authors of USPAP acknowledge their relevance with respect to their use of regression, adaptive estimation, neural network, expert reasoning, and artificial intelligence. But appraisers remain better than AVMs at recognizing motivations and knowledge levels of market participants.

The output of an AVM is not, by itself, an appraisal. It may become a basis for one if the appraiser believes the output to be credible for use in a specific assignment. If the appraiser believes it to be credible. Today, that's a very big "if."

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## Instructor Development Workshop – 2018 Recap –

In early October the Division held its two day Instructor Development Workshop (IDW) in Salt Lake City. This annual event is designed to inform and improve the knowledge and instructional skills of real estate, mortgage, and appraiser instructors. Other attendees of the event were individuals who have been contemplating becoming either a prelicense or continuing education instructor for a licensed education provider. The annual IDW event has been held consecutively by the Division for more than twenty five years, which is a significant milestone.

Division staff members spoke to attendees on the first day of the workshop during the morning session. The Division shared proposed legislation that it plans to submit to the legislature for con-

sideration during the 2019 legislative session. In addition, the Division presented common questions that it fields from licenses, as well as recent and recurring enforcement actions and affirmative steps that licensees should understand and take to avoid involvement in prohibited conduct. Other topics presented by Division staff included recent real estate and mortgage exam revisions, prospective licensee exam pass rates for 2018, and exam topics that require additional instructor focus and attention to enable candidates to be better prepared for their licensing tests and the beginning of their real estate careers. A Question & Answer Session was conducted with the following participants responding to attendees' broad ranging questions covering each of the Division's regulated industries:

Jonathan Stewart  
Division Director

Kadee Wright  
Division Chief Investigator

Kay Ashton  
Vice Chair of the Mortgage  
Regulatory Commission

Kevin Ewell,  
Appraiser Licensing Board

Russ Booth  
Real Estate Commission



The remaining day and a half was devoted to Instructor Development by nationally recognized real estate trainer and school administrator Mark Barker. Mr. Barker has a bachelor's degree in sociology and a master's degree in education. 35 years ago his application of modern adult education theory to real estate led the real estate education field in a new direction. Today most real estate educators utilize the techniques he pioneered. Mr. Barker is best known as the primary author of GAPE (Generally Accepted Principles of Education) and the Distinguished Real Estate Instructor (DREI) criteria which he authored in 1992 and which is still the benchmark for real estate academics worldwide. Mr. Barker was the National President of the Real Estate Educators Association (REEA) in 1993-1994. Over the past nearly 30 years, he has spoken in 49 states teaching instructor work-



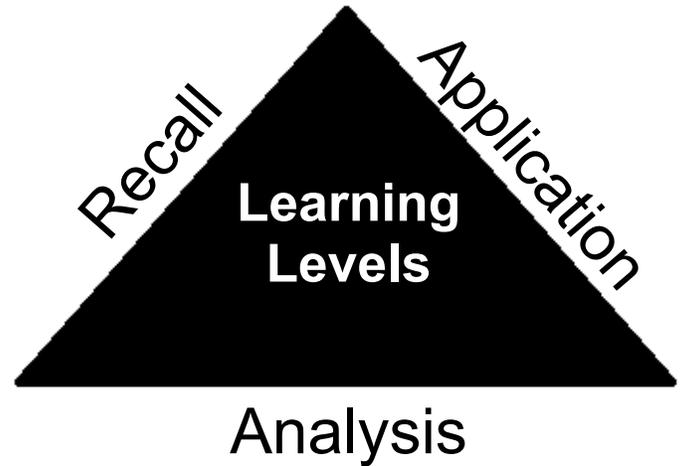
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## 13. Student Sophistication

Mr. Barker provided instruction on different Learning Levels including:



shops, continuing education, and high level sales programs.

Mr. Barker's workshop focused on 13 ways in which real estate schools pass rates can be positively improved. The 13 factors Affecting Student Exam Pass Rates and which real estate educators can have a direct constructive impact are:

1. Room Arrangement
2. Instructor Attitude
3. Textbook / Handouts
4. Instructor Knowledge
5. Sample Questions
6. "Bridging Techniques"
7. Question Handling
8. Classroom vs Online vs Blended Instruction Methods
9. Class / Test Scheduling
10. Technology
11. Test Validity
12. Test Content Outlines

The Division sincerely thanks Mark Barker, all participants in, and attendees of, the 2018 Instructor Development Workshop!

## Mark Barker 2018 IDW Instructor



## Division STAFF Spotlight



Chad Tengler

Chad Tengler is the Division’s Real Estate Analyst. He joined the Division’s team of employees in June of 2018 and has since enjoyed playing his role in protecting the public by representing the Division in administrative hearings and working on stipulations with respondents of violations of our State Statutes and Administrative Rules.

Chad was born in Salt Lake and has lived here most his life with the exception of a short time spent in Ohio. Chad became an attorney in 2016 after attending SJ Quinney College of Law. Before accepting his position with the Division of Real Estate, Chad did a judicial clerkship for two judges for the 4th District Court in American Fork, Utah.

Outside of work, Chad enjoys camping, hiking, fishing, golfing and exercising. He has been married for 12 years and has three Chihuahuas and two cats.

Chad is an essential part of the Division and it’s proceedings, thanks for all you do, Chad!

### Utah! Division of Real Estate

### NEWS

Director .....Jonathan Stewart  
Editor/Contributor...Mark Fagergren  
Contributor/Layout...Jennica Gruver  
Contributor.....Kadee Wright  
Contributor ..... Justin Barney  
Contributor ..... Van Kagie  
Contributor .....Chris Martindale

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Department of Commerce  
160 E 300 S (84111)  
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SLC UT 84114  
(801) 530-6747

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Jeffrey T. Morley, Vice Chair  
James S. Bringhurst  
Richard Sloan  
Keven Ewell

# Division of Real Estate

## 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.

### **APPRAISAL**

There were no disciplinary actions in the appraisal industry in the fourth quarter.

### **MORTGAGE**

GALE, JONATHAN ROBERT, mortgage loan originator, Ogden, Utah. In an order dated October 16, 2018, Mr. Gales's license was granted and placed on probation until December 31, 2019 due to criminal history. Case number MG-18-104354

HILTON, BENJAMIN A., mortgage loan originator, Provo, Utah. In a stipulated order dated October 3, 2018, Mr. Hilton admitted to having collected a fee for a loan modification before obtaining a written offer from the lender and before acceptance of the offer from the borrower, in violation of Utah law. Mr. Hilton agreed to pay a civil penalty of \$2,000. Case number MG-15-78909

RICHWINE, CRAIG ARLON, license applicant, Park City, Utah. In an order dated October 5, 2018, Mr. Richwine's application for licensure as a mortgage loan originator was denied upon a finding that he had made a false representation to the Division. Case No. MG 18-102365, Docket No. 2018-010

### **REAL ESTATE**

ALEXANDER, JILLIAN KYLE, sales agent, Park City, Utah. In an order dated November 6, 2018, Ms. Alexander's license was granted and placed on probation due to a pending criminal matter. Case number RE-18-104821

ASHWORTH, KYLE, principal broker, Vernal, Utah. In a prior disciplinary action, Mr. Ashworth's principal broker's license was revoked. In a stipulated order dated September 19, 2018, Mr. Ashworth admits that subsequent to the revocation of his principal broker license he assisted in the procurement of prospects for or the negotiation of a transaction involving the listing, advertising, selling, or buying of real estate with the expectation of receiving valuable consideration. He also admits that during that time he managed property owned by another person or assisted or directed in the prospects for or the negotiation of a transaction involving management of property owned by another person with the expectation of receiving valuable consideration. Mr. Ashworth agreed to immediately cease from all activities which violate Utah real estate licensing law and to pay a civil penalty of \$10,000. Case numbers RE-14-70158, RE-14-70072, and RE-15-

78321, and docket number RE 2018-020

BERCEL, SARAH MARIE, sales agent, St. George, Utah. In an order dated November 30, 2018, Ms. Bercel's license was granted and placed on probation due to a pending criminal matter. Case number RE-18-105425

BEYER, KARIE C., sales agent, Kaysville, Utah. On October 30, 2018, the Division issued a citation to Ms. Beyer for failing to identify her brokerage in an advertisement. The citation assessed a fine in the amount of \$150. Case number RE-18-99171 and Citation # DREC-18-15

BLOCKER, KIMBERLEY M., sales agent, Park City, Utah. In a stipulated order dated November 14, 2018, Ms. Blocker admitted to having engaged in unlicensed activity, in violation of Utah law and administrative rules. Ms. Blocker managed several vacation properties before obtaining her real estate license. She also admitted an advertising violation after she was licensed. In mitigation, Ms. Blocker obtained a license when she learned that the services she provided required licensure. She agreed to pay a civil penalty of \$5,150 and to complete three hours of continuing education in

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addition to the continuing education required for her next license renewal. Case number RE-15-76636

**BOCCHINO, DAMON T.**, associate broker, Kaysville, Utah. In a stipulated order dated October 17, 2018, Mr. Bocchino admitted to placing a number of properties on the multiple listing service without having obtained written authorization from the property owners, in violation of Utah law and administrative rules. Mr. Bocchino agreed to pay a civil penalty of \$2,000 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-15-78953

**BUCKLEY, KURT J.**, branch broker, Bountiful, Utah. In a stipulated order dated October 17, 2018, Mr. Buckley admitted to having failed to exercise reasonable supervision over the actions of his licensed staff, in violation of Utah law and administrative rules. Mr. Buckley 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-16-82790 and Docket number RE-2018-033

**BURNINGHAM, TORY**, sales agent, South Jordan, Utah. In a stipulated order dated October 17, 2018, Mr. Burningham admitted to having entered into an exclusive

right to sell agency agreement with an individual who was the buyer in contract for deed. Under the terms of the contract for deed, Mr. Burningham's client was not the owner of the property and he did not obtain authorization from the property owner to sell the property, in violation of Utah law and administrative rules. Mr. Burningham agreed to pay a civil penalty of \$2,000 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-15-77376 and docket number RE-2018-035. In a separate matter, the Division issued a citation to Mr. Burningham on October 29, 2018, for failing to identify his brokerage in a mailer advertisement. The citation assessed a fine in the amount of \$150. Case number RE-18-99949 and Citation # DREC-18-10

**BUTLER, SAMUEL D.**, sales agent, Spanish Fork, Utah. In an order dated November 20, 2018, Mr. Butler's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-103782 and docket number RE-2018-057

**CABRERA, DANIEL**, associate broker, Draper, Utah. On October 16, 2018, the Division issued a citation to Mr. Cabrera for failing to identify his brokerage in radio advertisements. The citation assessed a fine in the amount of

\$150. Case number RE-18-1103607 and Citation # DREC-18-9

**CRAYK, CAMERON K.**, sales agent, Cottonwood Heights. In a stipulated order dated November 14, 2018, Mr. Crayk admitted to having placed a for sale sign on a property with a rider that stated "Coming Soon." Mr. Crayk did not have a written agency agreement with the property owner at the time the sign was placed which is a violation of Utah law and administrative rules. Mr. Crayk agreed to pay a civil penalty of \$1,000 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-18-103874

**DARDON, NATHANAEL E.**, sales agent, Sandy, Utah. In a stipulated order dated October 17, 2018, Mr. Dardon admitted that he did not receive the earnest money deposit and when it was due and did not timely deliver the earnest money to the principal broker for deposit after the earnest money deposit was received. Mr. Dardon 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-17-89252

**DASTRUP, RYAN D.**, sales agent, South Jordan, Utah. In a stipulated order dated September

# Division of Real Estate

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19, 2018, Mr. Dastrup admitted to having placed two properties for sale on the multiple listing service without having obtained written authorization from the property owners, in violation of Utah law and administrative rules. Mr. Dastrup agreed to pay a civil penalty of \$1,000 and to complete six hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-17 95206

DELQUADRO, DOUGLAS D., sales agent, Murray, Utah. In a stipulated order dated October 17, 2018, Mr. Delquadro admitted to having failed on multiple occasions to use the state approved addendum form to make a counteroffer or other modification to a contract, in violation of Utah administrative rules. Mr. Delquadro 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-15-79594

DICKAMORE, BRUCE A., unlicensed, Bountiful, Utah. In a stipulated order dated November 14, 2018, Mr. Dickamore admitted that although he was not licensed, he had engaged in conduct requiring a real estate license, in violation of Utah law and administrative rules. In mitigation, Mr. Dickamore did not solicit the real estate business and only provided assistance at the owner's request. Also, a portion of the activity that he

engaged in was covered by a power of attorney from the owner and did not require a real estate license. Mr. Dickamore agreed to pay a civil penalty of \$1,000 and to cease from engaging in any real estate activities requiring a license. Case number RE-14-73934 and docket number RE-2018-040

DILLEY, SCOTT A., principal broker, South Jordan, Utah. In a stipulated order dated October 17, 2018, Mr. Dilley admitted that he was the buyer in a transaction in which the listing agent became affiliated with his brokerage prior to closing, creating a limited agency despite being the buyer in the transaction. Utah law does not allow a licensee to act as a principal and as a limited agent in a transaction. In other transactions, Mr. Dilley failed to obtain written informed consent before representing both buyers and sellers in transactions as their limited agent. These actions are in violation of Utah law and administrative rules. Mr. Dilley agreed to pay a civil penalty of \$8,000 and to complete 12 hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-14 74271

FUGAL, BRANDON D., sales agent, Pleasant Grove, Utah. On September 24, 2018, the Division issued a citation to Mr. Fugal for failing to identify his brokerage on his website advertisement. The citation assessed a fine in the amount of \$150. Case number RE-18-97690 and Citation # DREC-18-7 14

GALVAN, DAVID A., principal broker, Salt Lake City, Utah. In a stipulated order dated September 19, 2018, Mr. Galvan admitted to having continued to work as a real estate licensee while his license was expired, in violation of Utah law and administrative rules. Mr. Galvan agreed to pay a civil penalty of \$5,000 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-15 77051

GREER, CHRISTOPHER DODD, sales agent, West Jordan, Utah. In an order dated October 17, 2018, Mr. Greer's license was granted and placed on probation due to an unpaid tax lien. Case number RE-18-104362

GRESHLE, JOHN F., sales agent, Sandy, Utah. In an order dated October 25, 2018, Mr. Greshle's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-18-104584

HUNTER, SUZANNE, sales agent, South Jordan, Utah. In a stipulated order dated October 17, 2018, Ms. Hunter admitted that she was the sales agent of record in certain short sales transactions in which she made substantial and intentional misrepresentations, in violation of Utah law. Other licensees were also involved in these transactions and Ms. Hunter received a small transaction fee for her participation while sales commissions

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# Division of Real Estate

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were paid to another agent. Ms. Hunter agreed to pay a civil penalty of \$1,500 and to complete six hours of continuing education in addition to the continuing education required for her next license renewal. Case number RE-14-72898 and docket number RE 2018-024

JENSEN, DANIELLE, associate broker, Hooper, Utah. In a stipulated order dated October 17, 2018, Ms. Jensen admitted to having sued in her own name to collect a commission from a client. Utah law requires that if a lawsuit is brought to enforce the payment of a real estate commission, the principal broker must be the person to file the lawsuit. Ms. Jensen agreed to pay a civil penalty of \$1,000 and to complete three hours of continuing education in addition to the continuing education required for her next license renewal. Case number RE-16-82782 and docket number RE 2018-032

KENNY, DAVID B., principal broker, Sandy, Utah. In a stipulated order dated November 14, 2018, Mr. Kenny admitted that he acted as a limited agent in a transaction in which he was also a principal, in violation of Utah law and administrative rules. Mr. Kenny agreed to pay a civil penalty of \$1,000 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-17 95938

LAMB CHRISTOPHER, sales agent, Sandy, Utah. In an order dated October 25, 2018, Mr. Lamb's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18 104579

LARSON, KIMBERLY SUE, sales agent, Evanston, Wyoming. In an order dated November 20, 2018, Ms. Larson's application for licensure was denied due to the prior sanction of a professional license. Case number RE-18-102459 and docket number RE-2018-056

LONGHURST, D. BRADY, sales agent, Sandy, Utah. In an order dated November 29, 2018, Mr. Longhurst's license was granted and suspended for 30 days due to Mr. Longhurst's failure to disclose a plea in abeyance agreement in a criminal matter in his application for licensure and due to a prior license restriction. Following the suspension of Mr. Longhurst's license, the license will be placed on probation for the remainder of the licensing period. Case number RE-18-105370

LUCAS, ANDREW J., sales agent, Salt Lake City, Utah. In an order dated September 10, 2018, Mr. Lucas's license was renewed and placed on probation for the renewal period due to criminal history and a prior restriction of his license. Case number RE 18-103418

LYMAN, KRISTOFFER, sales agent, Layton, Utah. In a stipulated order dated November 14, 2018, Mr. Lyman admitted that he conducted property management activities through a company that was not registered with the Division and was not the brokerage with which he was affiliated, in violation of Utah law and administrative rules. Mr. Lyman agreed to pay a civil penalty of \$4,000 and to surrender his residual rights in his expired sales agent license. Case number RE-17-88820

MAGNOTTA, MATTHEW, sales agent, Park City, Utah. In a stipulated order dated October 17, 2018, Mr. Magnotta admitted to having repeatedly engaged in unlicensed activity during multiple periods of time during which his real estate license was expired, in violation of Utah law and administrative rules. Mr. Magnotta agreed to pay a civil penalty of \$7,500 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-15 75854

MAHMOOD, BADI, principal broker, Millcreek, Utah. In a stipulated order dated October 17, 2018, Mr. Mahmood admitted to having used an outdated and therefore unapproved real estate form, in violation of Utah law and administrative rules. Mr. Mahmood agreed to pay a civil penalty of \$1,000 and to complete three hours of continuing education in addition to the continuing education required for his next li-

# Division of Real Estate

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cense renewal. Case number RE-16-86678

MANGOLD, BRENDA, sales agent, Herriman, Utah. In a stipulated order dated October 17, 2018, Ms. Mangold admitted to having received compensation for real estate related services from a person other than the principal broker with whom she was affiliated, in violation of Utah law. Ms. Mangold agreed to pay a civil penalty of \$2,000 and to complete three hours of continuing education in addition to the continuing education required for her next license renewal. Case number RE-13-68520 and docket number RE-2018-026

MARRIOTT, CHRIS, Lehi, Utah. In an order dated September 28, 2018, Mr. Marriott's license was granted and placed on probation for the initial licensing period due to a plea in abeyance agreement with regard to a criminal matter. Case number RE-18-103760

MCDONOUGH, TONY, sales agent, West Jordan, Utah. In an order dated September 24, 2018, Mr. McDonough was assessed a civil penalty of \$500 and ordered to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-15-79233 and docket number RE-2018-046

ONEILL, SEAN, principal broker applicant, Hurricane, Utah. In an

order dated November 20, 2018, Mr. O'Neill's application for licensure was denied due to his criminal history. Case number RE-18-93098 and docket number RE-2017-021

PEHRSON, MATTHEW, sales agent, Salt Lake City, Utah. On October 29, 2018, the Division issued a citation to Mr. Pehrson for failing to identify the name of the brokerage in a marketing mailer advertisement. This was Mr. Pehrson's second advertisement violation. The citation assessed a fine in the amount of \$500. Case number RE-18-99288 and Citation # DREC-18-12

PULHAM, RANDY L., associate broker, Layton, Utah. On October 29, 2018, the Division issued a citation to Mr. Pulham for failing to identify his brokerage in an internet advertisement. The citation assessed a fine in the amount of \$150. Case number RE-18-98865 and Citation # DREC-18-11

RACICOT, JASON, sales agent, Park City, Utah. In an order dated November 30, 2018, Mr. Raciot's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-105421

REESE, BROOKS BLAIR, sales agent, St. George, Utah. In an order dated September 18, 2018, Mr. Reese's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-103575

RICHINS, TERENCE G., sales agent, Saratoga Springs, Utah. In a stipulated order dated September 19, 2018, Mr. Richins admitted to having participated in a transaction in which he was both the principal and the buyer's agent, in violation of Utah administrative rules. Mr. Richins agreed to pay a civil penalty of \$2,000 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-15-77769

ROMANO, VANESSA E., sales agent, Cedar City, Utah. In an order dated October 31, 2018, Ms. Romano's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-104762

SABLJAKOVIC, DZENIS, sales agent applicant, West Valley City, Utah. In an order dated October 17, 2018, Mr. Sabljakovic's license was denied due to criminal history. Case number RE-18-104381

SHEPHERD, DONNA, unlicensed, Hurricane, Utah. On November 1, 2018, the Division issued a citation to Ms. Shepherd for conducting property management services for other persons for a fee without the required license. The citation assessed a fine in the amount of \$1,000 and ordered Ms. Shepherd to cease engaging in conduct until such time as she obtains a Utah li-

# Division of Real Estate

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cense. Case number RE-17-95864 and Citation # DREC-18-16

SHOEMAKER, TIANI, sales agent, South Jordan, Utah. In a stipulated order dated November 14, 2018, Ms. Shoemaker admitted to having made a substantial misrepresentation, diverted money from the purpose for which it was received, engaged in other conduct which constitutes dishonest dealing, and having participated in a transaction in which a false device is used, in violation of Utah law and administrative rules. Ms. Shoemaker agreed to have her license suspended for six months, to pay a civil penalty of \$6,000, and to complete nine hours of continuing education in addition to the continuing education required for her next license renewal. Case number RE-12-61095 and docket number RE-2018-027

SMELTZER, NICOLE REBECCA, sales agent, Pleasant View, Utah. In an order dated November 7, 2018, Ms. Smeltzer's license was granted and placed on probation due to criminal history. Case number RE-18-104940

STANGER, BRANDON J., principal broker, Clinton, Utah. In a stipulated order dated September 19, 2018, Mr. Stanger admitted that he had failed to provide the brokerage with which he had been affiliated continued access to the property management records after he terminated property management services for the brokerage and had failed to uphold

his fiduciary duty of reasonable care and diligence in representing a principal, in violation of Utah law and administrative rules. Mr. Stanger agreed to pay a civil penalty of \$2,500 and to complete four hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-14-69332 and docket number RE-2018-022

STERN, JOSHUA H., sales agent, Salt Lake City, Utah. In a stipulated order dated November 14, 2018, Mr. Stern admitted to having made numerous and repeated advertising violations, contrary to Utah law and administrative rules. Mr. Stern agreed to pay a civil penalty of \$1,000 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-17-88107 and docket number RE-2018-045

STORRER, DAVID K., sales agent, West Point, Utah. In a stipulated order dated September 19, 2018, Mr. Storrer admitted to having placed an advertisement that failed to identify the name of the brokerage with whom he was affiliated, in violation of Utah law. Mr. Storrer agreed to pay a civil penalty of \$150. Case number RE-15-77792

STUART, MARTHA JUDITH, sales agent, West Jordan, Utah. In an order dated October 2, 2018, Ms. Stuart's license was granted

and placed on probation for the initial licensing period due to criminal history. Case number RE-18-103887

TUCKER, COULSON BRUCE, sales agent, Orem, Utah. In an order dated October 25, 2018, Mr. Tucker's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-104570

TUTTLE, DARRELL, sales agent, Riverdale, Utah. In an order dated October 16, 2018, Mr. Tuttle's license was reinstated and placed on probation for the renewal period due to criminal history. Case number RE-18-104355

WESTON, GAYLA, sales agent, Saratoga Springs, Utah. In an order dated October 4, 2018, Ms. Weston's license was renewed and placed on probation for the renewal period due to a plea in abeyance agreement in a criminal matter. Case number RE-18-703948

WIENER, WENDY J., unlicensed, Las Vegas, Nevada. On October 29, 2018, the Division issued a citation to Ms. Wiener for advertising property in Utah under her Nevada brokerage. Ms. Wiener is licensed in Nevada but not in Utah. The citation assessed a fine in the amount of \$1,000 and ordered Ms. Wiener to cease engaging in conduct until such time as she obtains a Utah license. Citation # DREC-18-14

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WEST, MARTHA, sales agent, Park City, Utah. In an order dated September 21, 2018, Ms. West's license was reinstated and placed on probation for the renewal period due to criminal history. Case number RE-18 101547

ZIMMERMAN, DONALD, associate broker, Sandy, Utah. In a stipulated order dated October 17, 2018, Mr. Zimmerman admitted to having failed to follow required procedures intended to notify licensees when changing the brokerage affiliation of those licensees, in violation of Utah administrative rules. Mr. Zimmerman 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 79231

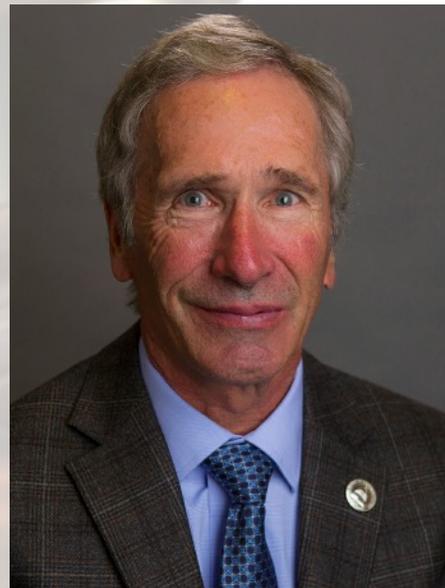
## **TIME SHARE**

There were no licensing or disciplinary actions in the timeshare industry in the fourth quarter.



Thank  
You

As Representative Froerer ends his service in the legislature, we would like to thank him for his long-time friendship and support of the Division. Anytime there was legislation affecting the Division or the industries we regulate, he was always there to show support. We are sad to see a good friend leave the legislature, but wish him well as he begins a new chapter as a Weber County Commissioner. Thank You Representative Froerer!



Gage Froerer

# Division of Real Estate



## Rule Developments

Since October 1, 2018

To view and comment on any proposed or amended rules, please visit the [Utah State Bulletin here](#).

### **Appraisal Management Company Rules**

An AMC rule amendment became effective November 5, 2018. The primary changes in the rule amendment include the timing and content of notice from an AMC to appraisers on the AMC's panels, required communications between an AMC and its appraisers, and the manner by which an AMC offers an appraisal assignment to appraisers.

The rule amendment also provides a presumption of compliance with the customary and reasonable fee requirement. If an AMC compensates an appraiser for a completed appraisal at a rate consistent with the fee schedule for the state of Utah as published by the United States Department of Veterans Affairs Denver Regional Loan Center Appraisal Fee Schedule (the "VA Fee Schedule") the fee is presumed to be in compliance. The amended rule does not adopt the VA Fee Schedule and the VA Fee Schedule is not a minimum fee or the required fee. Rather, the VA Fee Schedule is presumed to be customary and reasonable and in compliance with Utah and Federal law. An AMC may pay a fee lower than the VA Fee Schedule

if the AMC can document that the lower fee is customary and reasonable.

A second AMC rule amendment became effective December 12, 2018. This amendment provides that the Division collect the AMC registry fee and forward it to the Appraisal Subcommittee. The amount of the AMC registry fee is established by the Appraisal Subcommittee. The fee for an AMC that has been in existence for more than a year is \$25 for each appraiser who has performed an appraisal assignment for the AMC in connection with a covered transaction in Utah during the previous year. For an AMC in business less than a year, the registry fee is currently \$25 for each appraiser who has performed an appraisal assignment for the AMC in connection with a covered transaction in Utah since the AMC commenced doing business.

### **Appraisal**

There are no recently adopted or proposed rule amendments under consideration for the Appraisal rules.

### **Mortgage**

There are no recently adopted or proposed rule amendments under

consideration for the residential Mortgage rules.

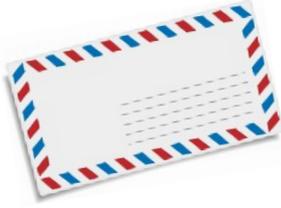
### **Real Estate**

On November 21, 2018, a proposed Real Estate rule amendment was filed. The proposed rule amendment 1) expands the definition of principal to include the manager of an entity; 2) clarifies that certain disclosure obligations of a real estate licensee must be made prior to the execution of a purchase or lease agreement; 3) clarifies that competing real estate schools are prohibited from making misrepresentations about other schools, their personnel, courses of instruction, or business practices; 4) allows for a student to obtain credit for completing an online course even if the course is not completed within one year of the date the student registered for the course; and 5) corrects the approval date of certain state approved forms.

Public comment on the proposed Real Estate rule amendment may be made through January 16, 2019.

### **Timeshare and Camp Resort**

There are no recently adopted or proposed rule amendments under consideration for the timeshare and camp resort rules.



## KAGIE'S KORNER

### “We Want To Buy Your House” Mailers

The Division receives a number of complaints regarding mailers offering to buy houses. An increasing number of these complaints involve possible violations by licensed agents. If you are licensed as a real estate professional and are sending out mailers, postcards, or any marketing material to property owners offering to buy, sell, lease, or rent their property, you are required to disclose that you are a licensed real estate professional and, if your license is active, you also need to disclose your brokerage information. These disclosures are required upon initial contact, i.e., on the postcard, mailer, or marketing material that is your initial contact with the property owner. Licensees should remember that they **are not** exempt

from the statutes and rules when they are acting on their own behalf. These rules apply to all forms of marketing to an owner of real property.

The following Administrative Rules apply to marketing mailers:

#### **R162-2f-401a. Affirmative Duties Required of All Licensed Individuals**

(5) 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;

And

#### **R162-2f-401h. Requirements and Restrictions in Advertising**

(1) Except as provided for in subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated.

