

First Quarter 2017

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Director’s Message 2017 Legislative Update

During the 2017 Legislative Session, the Division once again ran a clean-up bill. There were also changes to some licensing fees. Representative Gage Froerer helped us again by sponsoring H.B. 196S01, Division of Real Estate Amendments. Several of the changes in H.B. 196 were proposed by industry members. We appreciate the feedback and suggestions we received while amending the statute.

It has been great having someone in the Legislature like Representative Froerer, who understands the industry and supports what we are trying to accomplish. I would also like to thank Senator Daniel Hemmert. The support of the Utah Association of Realtors and particularly Chris Kyler and Mike Ostermiller is also greatly appreciated. With the help of these four individuals our bill moved through the process quickly. Thank you all for your support and assistance each and every year.

The changes made in H.B. 196S01 will go into effect on **May 8, 2017**. This article provides highlights of changes made; if you have questions, please read the exact language found in the bill or contact the Division.

H.B. 196S01 - <http://le.utah.gov/~2017/bills/hbillamd/HB0196S01.pdf>

H.B. 196S01 Summary of Changes

Changes Affecting all Industries

- Allows the Division to use citation authority for violations occurring within one year.
- Allows the Division to conduct public or private investigations.

Residential Mortgage Practices and Licensing Act

Adjudicative proceedings -Citation authority – 61-2-203

- Adds citation authority for failing to file a quarterly call report.



Jonathan Stewart

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Education providers – Education requirements – Examination requirements — 61-2c-204.1

- Adopts the Uniform State Test for new loan originators.
- Grants rulemaking authority for continuing education for new loan originators.

Prohibited Conduct – Violations of the chapter — 61-2c-301

- Prohibits any act that violates appraisal independence.

Record requirements - 61-2c-302

- Requires a call report to be filed not later than 75 days following the end of a quarter.

Appraisal Management Company Registration and Regulation Act

Registration required – Qualification for registration - 61-2e-201

- Prohibits an appraisal management company from being registered in Utah if previously having a license or registration revoked by a government regulatory body, unless subsequently vacated.

Prohibited Acts – Exclusions 61-2e-307

- Prohibits any act that violates appraisal independence.

Real Estate Licensing and Practices Act

Exempt persons and transactions — 61-2f-202

- Grants rulemaking authority for exempt persons or transactions.

Registration of entity or branch office — 61-2f-206

- Allows a broker (PBs and BBs) to simultaneously supervise up to three offices.
- Allows a sales agent working for a dual broker's property management company (with the broker's authorization), to obtain a Property Management Sales Agent designation allowing them to perform sales.

Termination of associate broker or sales agent by principal broker – Notice — 61-2f-304

- Grants rulemaking authority for the process a principal broker must follow when terminating a sales agent or associate broker.

Mishandling of trust money 61-2f-403

- Requires a licensee to reimburse the Division for the cost of a trust account audit, only after the Commission finds that gross mismanagement, comingling, or misuse occurred.

Licensing Fee Changes

For several years we have examined licensing fees in relation to the services provided to the industries we regulate. The statute that regulates fees, 63J-1-504 states:

(2) Each fee agency shall adopt a schedule of fees assessed for services provided by the fee agency that are:

(a) Reasonable, fair, and reflect the cost of services provided.

As far as we can tell, renewal fees for real estate agents and brokers have not changed since 2008. Due to a recent shift of Division staff based on need, we have reassessed licensing fees and the following fee changes have been approved by the Legislature and will become effective on **July 1, 2017**:

License Type	Old Fee	New Fee
Real Estate Broker	\$48.00	\$66.00
Real Estate Sales Agent	\$42.00	\$60.00
Appraiser (Licensed & Certified)	\$430.00	\$330.00

If you have any questions about these statutory changes, please contact the Division for additional information. We appreciate all those who provided feedback and suggestions that resulted in these changes.

Division of Real Estate

Utah! Division of Real Estate NEWS

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Co-Marketing/Co-Advertising *between* Mortgage and Real Estate Licensees

The practice of joint marketing between the mortgage and real estate industries is not prohibited by Utah statute or rule, but one should take care to consider potential compliance implications prior to investing in such a campaign. While real estate professionals might find helpful information in this article, it should be noted that it was written from the perspective of the mortgage industry.

First, regardless of marketing format or venue, it is important to have a clear and distinct separation between the mortgage licensee's portion of the advertising, and the real estate licensee's portion. The consumer must be able to easily identify that there are two different individuals or entities, each offering specific services, even though they are utilizing shared advertising. The lack of a distinct separation could result in a misleading advertising violation [61-2c-301(1)(l)].

Second, each licensee--whether individual or entity--must pay that licensee's fair share, otherwise, a licensee could potentially be at risk of a referral fee violation [61-2c-301(1)(a)] because marketing/advertising is a thing of

value. For example, a loan originator cannot cover the entire costs associated with co-marketing with a real estate agent based on the understanding the latter will refer business to the former, as such an arrangement would result in referral fee violations. If a loan originator and real estate agent decide to market or advertise together, the real estate agent has the obligation to pay her/his fair share for the joint marketing/advertising effort.

Third, as with any other marketing or advertising materials or methods, the mortgage licensee's principal lending manager (PLM) must review co-marketing or co-advertising for compliance with federal and state laws prior to rolling out such materials to the public [R162-2c-301a(2)(b)(ix)]. The PLM should also review any desired revisions to the marketing materials prior to such alterations going into effect.

The Division realizes most, if not all, of the information contained herein is common sense, but we hope you found this article worthy of a quick read. As always, please call or email the DRE should you have any related questions.

Continuing Education (CE) Certificates Banking & License Renewal Issues and Common Problems

Occasionally the Division is asked whether Continuing Education (CE) certificates are no longer necessary because course providers are required to bank¹ CE course completion information for attendees. The answer to this important question is found later in this article. Let us first discuss the CE banking process and relevant issues:

¹bank (banking) –
A Two Step Process:

Step One – Division approved **education providers** upload licensee course completion information (including providing the accurate name and license number of attendees) to the Division contracted CE **banking vendor**, Pearson VUE, within ten days of teaching a course.

Step Two – The CE **banking vendor** uploads CE course completion information to the **Division**, which can take up to three days.

CE banking is NOT accomplished until BOTH steps of this process have been completed.

Please note that banking CE credits requires the vendor to submit the accurate name² and license number of the licensee to the banking vendor. If the course provider cannot accurately read the spelling of the licensee's name, or their license number, or if the student uses a nick name, although the completion information was uploaded to the CE banking vendor, the licensee's RELMS account **(the licensee) will not receive credit for the course(s).**

²accurate name – The legal name of the licensee according to Division records.

Licensees should be diligent to record their legal name clearly **according to Division records** and their correct license number when they register and sign in to their CE courses. If you are unsure of how your name is recorded with the Division, or you cannot recall your license number, merely access your RELMS account to view your name and license number as recorded on DRE records. If your name is *wrong* on Division records, you will need to provide a government issued legal document (i.e. driver's license, passport, military ID, or a recent marriage certificate)

for the DRE to update/change our records.

Also, please be aware that the uploading of course completion information by providers is sent to the Division approved vendor, **not directly to the Division**, and this is only step one of the two-step banking process. Many licensees believe that CE providers upload completion information directly to the Division, this is not the case.

The Division uploads course completion data every business day, but due to weekends and holidays, it may take several more days for the Division to receive your course completion data and upload these CE hours into your individual RELMS account. You can see that the banking process although automated, it is not a "live" 24/7 operation. And although the RELMS system allows license renewal 24/7 for licensees in their renewal window (45 days for real estate and 3 months for appraisers), **if all CE is not loaded into the licensee's individual RELMS account, the licensee will be prevented from renewing.**

Why all the delays inherent in the banking process just described? Simply put...Money. The current CE banking process is a free ser-

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vice provided by the Division's testing contractor. Other contract banking providers would charge considerable amounts of money in order to eliminate the transmission delays in our current CE banking process.

The Division, with the strong support from many of our licensees, has concluded that having each real estate and appraiser licensee pay \$1.00 per CE hour, for every renewal cycle, for "instantaneous banking" is an unnecessary expense for licensees to incur. This extra cost would apply to each CE hour taken during the two year license period, not just those hours completed during the last fifteen days. The current system continues to serve us well. It may not be as fast or modern as a live data system, but unless you procrastinate completing your CE until the last fifteen days of your two year license, our current system works perfectly fine.

Now let us return to a question asked earlier in this article. Are continuing education (CE) certificates no longer necessary, since course providers are required to electronically bank CE course completion information for attendees? The answer to that question is generally "no", but in some instances "yes."

At the time of license renewal, all licensees are required to submit a renewal application through the online RELMS system, including

the banking of continuing education credits, by the license expiration date.

To renew at the end of a Utah real estate licensee's first renewal cycle, the licensee is required to complete the 12-hour new sales agent⁴ course certified by the Division, plus six non-duplicative hours⁵ of continuing education.

⁴new sales agent – Any one of the following:

- a) A first time real estate sales licensee who has never renewed their active license;
- b) A former Utah real estate licensee who allowed their license to expire, and has been reissued a Utah real estate sales license that has never been renewed on active status; or,
- c) Any real estate licensee that has not renewed their real estate sales license on active status since July 2007, who is now renewing their license on active status.

⁵non-duplicative – Courses with the same CE course number (i.e. RC160417) cannot be taken for CE credit in the same license renewal period.

For licensees who are not in their first renewal cycle, they must com-

plete 18 non-duplicative hours of continuing education including at least nine non-duplicative hours of core topic courses.

Remember that a licensee will be prevented from renewing their license until the required number of CE hours have been entered into the licensee's RELMS account.

If a licensee completed a CE course by the 15th day of their expiration month, and ten days later the CE credits for their course have not been banked into the licensee's RELMS account, the licensee may be prevented from completing and renewing their license in the online RELMS system. In this very specific situation, the Division by Administrative Rule will intervene and directly upload the course completion information into the licensee's RELMS account providing that the licensee submits a complaint to the Division against the education provider for not banking the licensee's course completion information within the required ten days, **and presents their course completion certificate to the Division.**

So, in the infrequent occasion where a licensee has completed all required CE by the 15th of the month of license expiration, and their CE credits did not get uploaded into their RELMS account, the Division will manually process their CE credits so that the licensee will be able to renew their license on a timely basis. The key

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here is for the licensee to have completed all required CE by the 15th day of their renewal month.

In order for the Division to manually bank hours the following events need to have happened:

- 1) The licensee needs to have **completed** all required CE **by the 15th day of their expiration month:**
- 2) The CE provider failed to electronically report the licensee's CE hours within 10 days following the course completion date; and
- 3) The Licensee submits a CE banking complaint form to the Division, along with their course completion certificate. In order for the Division to accept a complaint for a provider who failed to bank a licensee's CE credits, you need to complete all required CE by the 15th of the month of license expiration, and you must submit a course completion certificate.

Education providers are required to provide a course completion certificate to any student who requests one in conjunction with the licensee filing a complaint for not complying with CE banking requirements.

Therefore, you only need to have a completion certificate if the education provider fails to bank your course completion information as required by rule.

Licensees have good reason to ask their education provider these questions before they decide to enroll in their real estate or appraisal courses:

During the last ten days of each month how frequently does the course provider bank course completion information to the Division's CE banking vendor (Pearson VUE)?

- o Within ten days as required by Division Rule, or more frequently?
- o Weekly, Daily, Several times each day?

Will I receive a course completion certificate when I complete this class?

- o For both "live" CE as well as distance education courses?
- o If not, why not?
- o Can I request a CE completion certificate to be provided at the completion of the course (even though you typically do not provide them)?

If you want to receive a course completion certificate immediately upon completion of the course or if you need your course banked immediately after completion and the provider you contact does not provide you with these services, perhaps you should shop other providers to ensure that you receive the level of service that you desire before you enroll in their course(s).

So, why doesn't the Division just skip the time consuming two step CE banking system altogether by processing (manually uploading) all completion data for all CE courses? The answer to this question is that staff processing of over 17,000 CE credit hours per month would divert staff from assisting licensees and processing new sales agent, broker, and appraiser license applications.

To avoid the unnecessary stress and frustration associated with last minute rushes, let's each commit to complete continuing education needed for renewal before the final two weeks before our two year licenses expire.

WELCOMING NEW COMMISSIONERS! . .



Scott Gibson
Mortgage Commission

I started in the mortgage industry in 1998. I have worked primarily as a loan originator but most recently I have added Branch Manager/PLM to my resume. I find myself in more of a supportive role as encouraging others to succeed fits in my wheelhouse. I enjoy meeting new people on a daily basis and nothing is more fulfilling than assisting others to succeed whether it be acquiring a home loan or closing a home loan.

My main interest in life involves my family. I spend a great deal of my spare time either coaching or supporting any of my 6 children. My two oldest boys are serving in the armed forces of which I am very proud while my two daughters are career oriented women. My two youngest boys have sports ambitions so supporting them brings me much joy. I wouldn't be half the man I am without the support and companionship of my lovely wife of 25 years. Together we also enjoy 5 grandchildren!

While I enjoy all outdoor activities, camping with my family and friends is the most relaxing.

I think you will find my passion for my work is unmistakable. I believe everyone deserves to have an overall good experience while financing their home.



Richard Sloan
Appraiser Board

Richard has been practicing as a real estate appraiser and consultant with J. Philip Cook, LLC. since 1999. He is a certified general appraiser in the State of Utah and holds the MAI designation from the Appraisal Institute. In addition to appraising all types of general commercial properties, Richard specializes in eminent domain and real estate damages, including for litigation consultation and support. He is a member of the International Right of Way Association and has served on the board of the Salt Lake chapter for the past several years. Richard holds a B.A. degree in Accounting from the University of Utah and an MBA from Westminster College.

“It is a privilege to serve on the Appraisal Board for the State of Utah. I look forward to working with and assisting the Board in maintaining and promoting the continuing integrity and independence of the appraisal industry within the State through quality education and effective oversight.” - Richard Sloan

THANK YOU AND FAREWELL! . .

Dan served on the Appraiser Board for six and a half years. The Division appreciates all of his hard work and dedication to the industry and our licensees. A huge thank you to Dan for his great contributions!

“It has been an honor and a privilege to have been asked to serve on the Utah State Division Of Real Estate appraisal board. I have learned a lot in serving and hope I have also contributed to the betterment of the appraisal profession. The staff at the Division are great to work with and I have made some good friends there. I thank them for their service to our profession. It is time now for my wife and I to move on to a new service to others. We have been called to serve in the Spain Barcelona Mission for the LDS church. We are looking forward to this experience. So for now hasta luego.” - Dan Brammer



Dan Brammer
Appraiser Board

Kagie's Korner

Earnest Money Deposits Held By a Title Company and Issues That May Arise

Investigators with the Division have noticed a trend of earnest monies being deposited into a title company's trust account, in a manner that may not protect the fiduciary interests of your clients. As investigators, we see many Real Estate Purchase Contracts and we have a few concerns that we would like to address with you today.

For example, a listing agent receives an offer from a buyer's agent, the REPC states that the earnest money is a thousand dollars, and on addendum one, the contract states that the earnest money will be deposited according to Utah law at the Title Company of the buyer's choice.

When a listing agent is presented with an offer as outlined above where the earnest money is to be deposited into a buyer's title company, a number of issues can arise. First, a listing agent cannot protect his client when neither the listing agent nor the seller knows who the buyer's title company is. A listing agent looking out for the seller's interests should contact the buyer's agent and ask for a

new addendum that includes the Name and Location of the Title Company. Just think what could happen when the buyer is from out of state and is using an out of state title company. If the buyer defaults on the contract and the earnest money should be paid to the seller, how is the seller or the seller's agent even able to contact the title company if they have no idea of the name of the title company or where it is located? To address this issue, the language of the addendum should, at a minimum, contain the following: Earnest money to be deposited at KAGIEKORNER TITLE, Salt Lake City, UT. This will better facilitate a true understanding of the meeting of the minds between the buyer and seller, and leave no doubt as to the location of the trust account that is holding the earnest monies.

Another issue the Division routinely sees involves an agent receiving additional earnest money after the buyer and seller have agreed to and signed the REPC. Before closing, an issue may arise and be resolved by the parties by having the buyer deposit additional earnest money. In this situation, some

agents simply cross out the figure that was previously in the contract, or they "over write" or insert a different figure than what was previously entered in the acknowledged contract. Any additional earnest monies should be addressed in an addendum to the agreement, and not by making modifications to the agreed upon terms found on the first page of the REPC.

The last issue I would like to discuss is when an agent places their brokerage information on the REPC but fail to sign for receipt of the earnest monies, and simply take the earnest money check to the title company without acknowledging their receipt of earnest money funds. Just a friendly reminder Agents, whenever you have in your hand client earnest money (Cash, Check, or Money Order) state law and administrative rules require you to sign for receipt of the earnest monies. In addition, if you deposit that cash, check or money order with a title company, make sure that you receive a Deposit Receipt from that title company.

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FIRST 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

CHRISTENSEN, J. CLYDE, certified residential appraiser, Ogden, Utah. In a stipulated order dated December 28, 2016, Mr. Christensen admitted to having certified in an appraisal report that he had performed a complete visual inspection of the interior of the subject property but had not done so. In addition, he failed to disclose that he had utilized the appraisal services of another licensed appraiser who conducted the interior inspection and took interior and exterior photographs of the property. The Division agreed that there were mitigating circumstances. Mr. Christensen also admitted failing to make appropriate adjustments on another appraisal report. Mr. Christensen's actions were in violation of Utah law and Uniform Standards of Professional Appraisal Practice. The stipulated order provides for payment by Mr. Christensen of a civil penalty of \$1,500. Case numbers AP-13-63671, AP-13-63672, and AP-13-63673.

VINCENT, ROBERT, certified residential appraiser, Sandy, Utah. In a stipulated order dated February 22, 2017, Mr. Vincent admitted to having violated Utah law and the Uniform Standards of

Professional Appraisal Practice, in that he: 1) failed to correctly employ methods and techniques necessary to produce a credible report; 2) was careless or negligent in making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results; 3) failed to analyze available comparable sales data necessary for credible results; and 4) failed to provide an appraisal report that clearly and accurately set forth the appraisal in a manner that was not misleading. Mr. Vincent agreed to pay a civil penalty of \$2,500 and to complete eight hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-13-63292

MORTGAGE

ABDULHADI, AHMED CHAOUKI, mortgage loan originator, Dearborn Heights, Michigan. In an order dated December 28, 2016, Mr. Abdulhadi's license was granted and placed on probation until December 31, 2017, due to criminal history. Case number MG-16-87777

ESTRADA, JR., RICARDO, mortgage loan originator, West Valley City, Utah. In an order dated February 10, 2017, Mr. Estrada's li-

cense was granted and placed on probation for the pendency of the case in a pending criminal matter. Case number MG-17-88650

FERNANDES, DAVID ALAN, mortgage loan originator, Sacramento, California. In an order dated February 10, 2017, Mr. Fernandes's license was granted and placed on probation for the initial licensing period, due to criminal history. Case number MG-17-88652

GEIB, ERIC STEVEN, mortgage loan originator, New Baltimore, Michigan. In an order dated February 14, 2017, Mr. Geib's license was granted and placed on probation for the initial licensing period due to criminal history. Case number MG-17-88698

HOLBROOK, TYSON K., mortgage loan originator, Sandy, Utah. In an order dated February 13, 2017, Mr. Holbrook's application for licensure as a mortgage loan originator was denied. The Commission determined that Mr. Holbrook does not qualify for licensure due to his prior conduct and participation in a straw buyer scheme. Case number MG-16-87617

LONG, DONNIE ASHLEY, mortgage loan originator, Tucson, Ari-

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zona. On September 21, 2016, the Division issued a citation to Mr. Long for his failure to notify the Division of the surrender, cancellation, or denial of a license by another jurisdiction. The citation assessed a fine in the amount of \$250. Citation # C-85700-01

SANCHEZ, CARLO M., mortgage loan originator, Holladay, Utah. On August 31, 2016, the Division issued a citation to Mr. Sanchez for false or misleading advertising. The citation assessed a fine in the amount of \$500. Citation # C-78144-01

SIMPSON, BRIAN, mortgage loan originator, American Fork, Utah. In an order dated January 13, 2017, Mr. Simpson's license was reinstated and placed on probation until December 31, 2018 due to criminal history. Case number MG-16-88120

SWARM, JORDAN MICHAEL, mortgage loan originator, Kaysville, Utah. In an order dated February 24, 2017, Mr. Swarm's license was granted and placed on probation for the initial licensing period due to criminal history. Case number MG-17-88840

REAL ESTATE

ALFARO, ROLANDO E., sales agent, Kearns, Utah. In a stipulated order dated January 18, 2017, Mr. Alfaro admitted to having continued to practice as a real estate sales agent for a month after his license expired and prior to his

license being reinstated, in violation of Utah administrative rules. For this unlicensed activity, Mr. Alfaro agreed to pay a civil penalty of \$1,000 and to complete one hour of continuing education in addition to the continuing education required for his next license renewal. Case number RE-13-65378

BACKUS, ALEC DEAN, sales agent, Nibley, Utah. In an order dated February 24, 2017, Mr. Backus's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-88832

BECK, CAITLIN, principal broker, Salt Lake City, Utah. In an order dated December 6, 2016, Ms. Beck's license was renewed and placed on probation for one year due to a plea in abeyance in a criminal matter. Case number RE-16-87420

BORUP, JASON LEE, sales agent, Provo, Utah. In an order dated December 29, 2016, Mr. Borup's application for licensure as a real estate sales agent was denied due to his criminal history, tax liens, an unpaid civil judgment, and a judgment for unpaid child support. Case number RE-16-87787

BOWEN, KIMBERLY (TUCKER), sales agent, Cottonwood Heights, Utah. In a stipulated order dated January 18, 2017, Ms. Bowen admitted to having been convicted of several felony criminal offenses and agreed to the revocation of her license. In a separate hearing to

determine the amount of a civil penalty for Ms. Bowen's conduct as a real estate sales agent, the Commission entered an order dated February 22, 2017, assessing Ms. Bowen a civil penalty of \$18,000. Ms. Bowen has filed an appeal of her convictions in the criminal case. Case numbers RE-11-57588 and RE-16-85851

BRIGHT, TRENTON C., sales agent, Price, Utah. In a stipulated order dated January 18, 2017, Mr. Bright admitted to having established a sales office and advertised real estate sales from the office without registering the office with the Division and without disclosing the name of the brokerage with which Mr. Bright was affiliated, in violation of Utah law and administrative rules. Mr. Bright agreed to pay a civil penalty of \$2,500 and to complete three hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-16 82571

BROWN, Robert J., principal broker, Hyrum, Utah. In a stipulated order dated March 15, 2017, Mr. Brown admitted to having signed the broker certification on the experience log of an agent that he supervised for experience gained while the agent was affiliated with a different brokerage in violation of the rule that a licensee may not make a misrepresentation to the Division. Mr. Brown agreed to pay a civil penalty of \$500. Case number RE-15-77782

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CARMAN, MICHELLE, unlicensed, Salt Lake City, Utah. On November 2, 2016, the Division issued a citation to Ms. Carman ordering her to cease and desist from engaging in the business of a principal broker in Utah until such time as she obtains a license. Citation # DREC-16-6

CASTELLANOS, CHRISTOPHER, unlicensed, Pompano Beach, Florida. On September 28, 2016, the Division issued a citation to Mr. Castellanos ordering him to cease and desist from engaging in the business of a principal broker in Utah until such time as he obtains a license. Citation # DREC-16-3

CLIFFORD, LANCE, sales agent, St. George, Utah. On July 7, 2016, the Division issued a citation to Mr. Lance for failing to include his brokerage information in advertising. The citation assessed a fine in the amount of \$150. Citation # C-72834-01

COATES, PETER M., sales Agent, Salt Lake City, Utah. In an order dated August 21, 2015, the Commission determined that Mr. Coat's license expired on April 15, 2015, and has not been renewed. The license certificate that Mr. Coates's printed on May 9, 2015, was an error and is invalid. If Mr. Coates applies to have his license reinstated, he must comply with the applicable statutory requirements. Case number RE-14 70976

CROFTS, KIMBER S., sales agent, South Jordan, Utah. In an order dated December 2, 2016, Ms. Crofts's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-87375

ENCE, JESSE JAY, sales agent, Santa Clara, Utah. In an order dated January 26, 2017, Mr. Ence's license was renewed and placed on probation for one year due to criminal history. Case number RE-17-88403

FAIRBANKS, LANCE J., principal broker, Cottonwood Heights, Utah. In an order dated February 7, 2017, Mr. Fairbanks's license was renewed and placed on probation for one year due to a plea in abeyance to a criminal matter. Case number RE-17-88583

FERLAND, JASON M., sales agent, Layton, Utah. On July 22, 2016, the Division issued a citation to Mr. Ferland for failing to include his brokerage information in advertising. The citation assessed a fine in the amount of \$150. Citation # C-84558-01

HARPER, ELIZABETH MARIE, sales agent, Draper, Utah. In an order dated January 26, 2017, Ms. Harper's license was granted and placed on probation for the initial licensing period due to her plea in abeyance in a criminal matter. Case number RE-16-84884

HELLER, CHRISTOPHER J., sales agent, Sandy, Utah. In an order dated February 7, 2017, Mr.

Heller's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-88582

HOFFEE, MICHAEL J., principal broker, Sandy, Utah. In an order dated December 1, 2016, Mr. Hoffee's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-16-87368

JAUSSI, DALE, principal broker, Eagle Mountain, Utah. In a stipulated order dated December 2016, Mr. Jaussi admitted to having acted as both a principal in a real estate transaction and as agent for a client in the same transaction, in violation of Utah law and administrative rules. Mr. Jaussi 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-13-67775

JESSOP, ROSELLA, sales agent, Eagle Mountain, Utah. In an order dated December 30, 2016, Ms. Jessop's license was granted and placed on probation for the initial licensing period due to her plea in abeyance in a criminal matter. Case number RE-16-87813

KARTCHNER, JONTE M., sales agent, South Salt Lake City, Utah. In an order dated January 5, 2017, Ms. Kartchner's license was granted and placed on probation for the initial licensing period due to criminal history.

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nal history. Case number RE-17-87870

KERMIZIS, MICHAEL J., associate broker, Park City, Utah. In a stipulated order dated February 15, 2017, Mr. Kermizis admitted to having added his contact information to another agent's advertising sign despite not having a listing agreement with the owner. The contact information included the name of Mr. Kermizis's previous brokerage. These acts are in violation of Utah law and administrative rules which prohibit advertising in a false, misleading or deceptive manner and placing a sign on real property without the consent of the property owner. Mr. Kermizis 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-16-86983

LARSEN, TRAVIS, sales agent, North Ogden, Utah. In an order dated January 26, 2017, Mr. Larsen's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-87387

LOGAN, KENNA PATRICIA, sales agent, Orem, Utah. In an order dated January 13, 2017, Ms. Logan's license was granted and placed on probation due to a pending criminal matter. Case number RE-17-88115

LOPEZ-MONTIEL, DESARAY, sales agent, West Valley, Utah. In an order dated December 16, 2016, Ms. Lopez-Montiel's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-87625

LOSEE, JORDAN-MASON, sales agent, Taylorsville, Utah. In an order dated February 14, 2017, Mr. Losee's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-88693

MALCOM, TODD, sales agent, Sandy, Utah. In an order dated February 22, 2017, Mr. Malcom's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-17-88680

MATKIN, STEPHANIE, associate broker, Price, Utah. In an order dated January 26, 2017, Ms. Matkin's license was renewed and placed on probation for the renewal period due to a plea in abeyance to a criminal matter. Case number RE-17-88401

MCCARTY, JUSTIN WAYNE, sales agent, Page, Arizona. In an order dated December 2, 2016, Mr. McCarty's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-87388

MERRYWEATHER, LEE, sales agent, Park City, Utah. In an order

dated March 7, 2017, Mr. Merryweather's license was renewed and placed on probation for the renewal period due to a pending criminal matter. Case number RE-1788830

MINCHEY, BRIAN J., sales agent, Herriman, Utah. In an order dated January 26, 2017, Mr. Minchey's application for licensure as a real estate sales agent was denied due to criminal history. Case number RE-16-83917

O'BRIEN, JR., CHARLES R., sales agent, Draper, Utah. In an order dated January 10, 2017, Mr. O'Brien's license was granted and placed on probation for the initial licensing period due to criminal history and the prior sanction of his license. Case number RE-17-88006

PACE, JENNY A., principal broker, Farmington, Utah. In a stipulated order dated December 21, 2016, Ms. Pace admitted that a property for which she was the listing agent and broker was still actively advertised for sale more than three months after the sale of the home, in violation of Utah law. In mitigation, Ms. Pace did not personally post the advertisement. It was posted by another agent in the office. Ms. Pace agreed to pay a civil penalty of \$500 and to complete. Case number RE-16-84854

PEACOCK, HALEY, sales agent, Kaysville, Utah. In a stipulated order dated January 18, 2017, Ms. Peacock admitted to having distributed door hanger notices advertis-

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ing an open house without including her brokerage information as required by administrative rules. Ms. Peacock agreed to pay a civil penalty of \$150. Case number RE-14-73959

PITCHER, BRIAN R., sales agent, Springville, Utah. On July 7, 2016, the Division issued a citation to Mr. Pitcher for failing to include his brokerage information in advertising. The citation assessed a fine in the amount of \$150. Citation # C-75026-01

RAINES, DONALD GEORGE, sales agent, Herriman, Utah. In an order dated January 26, 2017, Mr. Raines's license was renewed and placed on probation for the renewal period due to a plea in abeyance to a criminal matter. Case number RE-17-88407

RICHARDSON, MICHAEL D., sales agent, Salt Lake City, Utah. In an order dated February 10, 2017, Mr. Richardson's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-17-88648

SORENSEN, JESSICA, sales agent, Herriman, Utah. In an order dated February 24, 2017, Ms. Sorenson's license was renewed and placed on probation due to a pending criminal matter. Case number RE-17-88833

TOLBERT, TYLER B., sales agent, Kaysville, Utah. In a stipulated order dated January 18, 2017, Mr. Tolbert admitted to having failed to

disclose criminal history that occurred during the previous licensing term when he applied to renew his license, in violation of administrative rules. Mr. Tolbert stated that his failure to disclose was unintentional and he agreed to pay a civil penalty of \$500. Case number RE-16-87613

VON CLEMENTS, KENDELL, dual broker, St. George, Utah. In an order dated December 22, 2016, Mr. Von Clements's license was renewed and placed on probation due to a pending criminal matter. Case number RE-16-87692

WARDEN, EMILIE NICOLE, sales agent, Salt Lake City, Utah. In an order dated February 14, 2017, Ms. Warden's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-17-88688

WASHBURN, KALEB M., sales agent, Payson, Utah. In a stipulated order dated January 18, 2017, Mr. Washburn admitted to creating and distributing an advertising flyer that did not include the name of his affiliated brokerage, in violation of administrative rules. Mr. Washburn agreed to pay a civil penalty of \$650. Case number RE-14-73046

YOUNG, SHANDRA MARIE, sales agent, Ogden, Utah. In an order dated January 27, 2017, Ms. Young's application for licensure was denied due to criminal history. Case number RE-17-88412

YRAGUEN, TONY B., dual broker,

South Jordan, Utah. In a stipulated order dated December 21, 2016, Mr. Yraguen admitted to having entered into a number of property management agreements for a brokerage with which he was not affiliated at the time, in violation of Utah law. Mr. Yraguen 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-12-62706

ZIMMER, CHERYL LYNN, sales agent, Cedar City, Utah. In a stipulated order dated December 21, 2016, Ms. Zimmer admitted to having twice signed and filed an unlawful notice of interest on real property, in violation of Utah law and administrative rules. Ms. Zimmer 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-16-87267

ZIMMER, JARED, principal broker, Cedar City, Utah. In a stipulated order dated December 21, 2016, Mr. Zimmer admitted to unprofessional conduct by having his clients sign a listing agreement with provisions contrary to referral instructions from the clients' relocation company. He told his clients that the agreement was necessary and not binding. He also listed the property prematurely on the MLS at a price below the sellers' desired listing price and he refused to remove the listing for several days.

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Mr. Zimmer's wife who was also a sales agent affiliated with him then filed an improper notice of interest on the property. In addition, Mr. Zimmer admitted to several advertising violations. Mr. Zimmer agreed to pay a civil penalty of \$3,000 and to complete six hours of continuing education in addition to the continuing education required for his next license renewal. Case numbers RE-14-72542, RE-14-71004, and RE-13-67640

ZUBIRI, AMADO VILLEGAS, sales agent, Taylorsville, Utah. In a stipulated order dated February 15, 2017, Mr. Zubiri admitted to participating in a real property lease transaction without disclosing his ownership interest in the property and his status as a licensed real estate sales agent, in violation of Utah law and administrative rules. The underlying mortgage was not paid and the property was foreclosed and the tenant evicted. The tenant requested the refund of her security deposit but Mr. Zubiri failed to account for or remit the deposit. Mr. Zubiri agreed to pay a civil penalty of \$6,000 and to complete eight hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-11-54127

TIMESHARE

TRIMBLE, RONALD JASON, time-share salesperson, Provo, Utah. In an order dated December 30, 2016, Mr. Trimble's license was denied due to criminal history. Case number TS-16-87814



LATE RENEWAL

Is there a "grace period" for extenuating circumstances??

Every month there are a small number of licensees who for various reasons fail to renew their licenses on time. Some of the most common reasons expressed by licensees for their inability to renew in a timely manner are:

- they attempted to renew the day or night before the expiration of their license, and for some reason they were unable to complete the renewal process
 - o Their user name or password would not grant them access into their RELMS account
 - o RELMS showed that they did not have sufficient CE, even though they just completed their final course
 - o RELMS would not accept their credit card
 - o RELMS "glitched out"
- occasionally, we are also informed of some extremely unfortunate event such as a health issue, accident, or the death of a family member etc.

These and other explanations have been shared with Division staff members in order to receive consideration for granting an extension of time to comply with license renewal

requirements, or to be offered a "grace period" wherein the licensee can renew their license late without having to pay a late fee or take any additional CE.

The real estate statute provides or offers no means for our staff to grant a license extension or to allow a "grace period" for licensees. The statute merely states that a license expires if it is not renewed on or before its expiration date (Utah Code 61-2f-204 (2)).

Although grace periods or license extensions are not allowed, the statute does provide real estate and appraisal licensees up to one year to reinstate their expired license. There are, however, late fees and additional CE requirements depending on the length of time between expiration and application for reinstatement.

If you are having troubles renewing your real estate license, you should contact Division licensing staff for assistance. You need to resolve any problems you may be having BEFORE the expiration of the month your license expires. Obviously you can contact the Division office whenever we are open for business for assistance, but if you contact our staff AFTER the end of the month, they are unable to waive late fees or grant extensions for expired licenses.

IN THE SPOTLIGHT

Eric Stott has been the Division's Real Estate Analyst for about 6 months. Previously he worked in private practice for 5 years doing civil litigation, family law, bankruptcy, real estate, etc. Prior to that he worked for the State of Nebraska. He was also an adjunct instructor teaching real estate pre-licensing courses for 2.5 years at Western Nebraska Community College.

Eric's family consists of his wife, son, two daughters and Tonk the dog. In their 16 years of marriage, Eric and his wife have moved 9 times! Eric says he moved back to Utah because he missed the mountains and wanted to be closer to family and friends. His hobbies include outdoor activities like hunting, fishing, and hiking, watching movies, tv shows and volleyball which he played for 4 years in high school. In Nebraska he thought it would be fun to sign his son up for "co-ed" volleyball at the YMCA when he was about 9 years old. He ended up being the only boy on his team...and in the entire league (he hasn't wanted to play since.)



ERIC STOTT

"I like learning new things, so it has been great to get this job with the Division and expand my knowledge of real estate statutes/rules, as well as learn new industries that I didn't have much previous experience in (appraisal, mortgage). I enjoy working with the enforcement team because it is an important aspect of protecting the public. I also enjoy working with the Division because I don't have to worry about child custody disputes all day and night." - Eric Stott

Eric's experience and knowledge has quickly proven to be a great benefit to the Division. We're happy to have you, Eric!



LACEY VAWDREY

Lacey Vawdrey is one of the newest members of our Real Estate licensing team! She's been on board since July of 2016 and has quickly become an expert on all things Real Estate licensing. She's a great addition to our work family here at the Division.

Before accepting her position with the Division of Real Estate, Lacey worked for Zions Bancorporation for 2 years. She was born and raised in Utah and lived in New Jersey with her husband for about 2 and a half years where they enjoyed visiting New York along with the surrounding states and beaches. In 2013 they returned to Utah, purchased their first home and started a family. They have two Shih Tzu dogs and a Doberman/Rottweiler mix. Outside of work Lacey enjoys doing anything outdoors such as hiking, camping and spending time with family.

"I really enjoy working for the Division Of Real Estate, there is always something new to learn and room to grow." - Lacey Vawdrey

One of Lacey's favorite quotes to live by is - "Don't get too busy making a living you forget to make a life!"

Becoming

PART of the DEAL

- Chris Martindale, Investigator

A real estate transaction can be a delicate process. Facilitating a contract between two parties requires a licensee to put the utmost care and consideration into the transaction. The statutes and rules enforced by the Division of Real Estate are in place to protect licensees, the public, and the industry as a whole. Applying these rules and statutes to every transaction will help avoid many pitfalls that can take place. It is worthwhile to understand specific rules and how they apply to a transaction. Let's look at rule R162-2f-401a. Affirmative Duties Required of All Licensed Individuals. In this rule, a licensee is required to uphold a number of fiduciary duties in the course of representing a principal. Within these rules are key words worth examining

Fiduciary – R162-2f-401a(1) involves a legal or ethical relationship of trust with the principal. A licensee under the obligation of a “fiduciary duty” to another party is required to act in the best interest of that party.

Loyalty - R162-2f-401a(1)(a) obligates an agent to place the best interests of the principal above all other interests, including the agent's own.

Obedience – R162-2f-401a(1)(b) obligates the agent to obey all lawful instructions from the principal. A decision made by a principal may not be in the licensee's best interest. However, the agent's duty is to the principal.

Closing a transaction free of complications is the desired result of all parties. However, if your fiduciary duty to your principal is compromised, this can be a recipe for disaster. The Division often investigates cases where the application of these rules has been ignored. Whether your desire is to simply be helpful, or to speed up the process of the transaction, inserting yourself into the contract by performing an action that should be the action of the principal can put you or your client in a position of unwanted civil liability. The following are some examples of this potential problem:

- Taking it upon yourself to fix an item requested in an addendum.
- Advocating on behalf of personal friends or relatives to perform services for your principal.

- Hiring an individual on behalf of the principal to perform a service.
- Knowingly or unknowingly offering legal advice to a principal.
- Recommending or assisting in a course of action to “speed up” the transaction process.

These are only a few examples of potential problems when you insert yourself into the contract and create a potential liability. It is your fiduciary duty to keep the principal informed of the process, and allow the principal to make any and all decisions based on the facts and information presented. When you avoid steering your client into a decision, you allow your client to control the transaction. Even if their informed legal decision could end the deal, it is their informed decision to make. Give them the reins and be informative within the scope of your agreement. In the end, strict adherence to these rules and facilitating the contract to the best interest of your client will protect you, your client, and the industry as a whole.

RULE DEVELOPMENTS

Since January 1, 2017

To view and comment on any proposed or amended rules, please visit the Utah State Bulletin at <https://rules.utah.gov/publications/utah-state-bull/>

Appraisal Management

In April 2016, the Appraiser Board, acting with the Division of Real Estate, established a rules committee to consider possible amendments to the administrative rules relating to the manner by which an appraiser may be removed from an AMC's appraiser panel and how appraisal assignments are offered to appraisers by an AMC. The Appraiser Board approved the filing of a proposed rule amendment. A public hearing on the proposed rule amendment was held January 25, 2017.

After considering the public comments received during the public comment period and during the public hearing, the Appraiser Board determined to make changes to the proposed AMC rule amendment. The changes are being prepared for filing. When the changes to the proposed rule amendment are filed, the public may comment on the proposed changes. A summary of the proposed rule amendment, including the changes being added, are as follows:

a. The amendment will provide clarity and transparency in communications between an AMC and an appraiser with regard to disclosures and notices from the AMC to the appraiser.

b. The law requires that an AMC pay an appraiser for an appraisal assignment an amount that is customary and reasonable for the geographic area and provides some presumptions of compliance. The amendment would add an additional presumption of compliance to those already available to an AMC. The amendment provides that the AMC is presumed to comply with the customary and reasonable payment requirement if the AMC pays an appraisal fee consistent with the United States Department of Veterans Affairs fee schedule.

c. The amendment clarifies the manner by which an AMC may offer a residential appraisal assignment to an appraiser. An AMC may not offer an assignment to a group of two or more appraisers by broadcasting a simultaneous electronic communication. On a business day an appraiser will have 60 minutes to respond to the

communication and accept an assignment before the assignment may be offered to another appraiser. If other than a business day, the appraiser will have until 9:00am (MT) the next business day to accept an assignment before the assignment may be offered to another appraiser.

d. The amendment specifies that if an AMC uses delivery time for completion of an appraisal report for a tiered panel model or when ranking an appraiser, the AMC shall only use business days in the time calculation.

Appraisal

There are no proposed rule amendments under consideration for the appraisal rules.

Mortgage

There are no proposed rule amendments under consideration for the residential mortgage rules.

Real Estate

1. In April 2016, the Real Estate Commission, acting with the Divi-

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sion of Real Estate established a rules committee to consider possible amendments to the advertising rule. The Commission approved the filing to amend the rule and also to amend the broker experience rules. The amendment limits broker experience points for experience resulting from a non-exclusive broker agreement. The rule amendment became effective January 19, 2017. This amendment:

a. eliminates the font size requirements in advertising in favor of a requirement that the name of the real estate brokerage be identified in a clear and conspicuous manner;

b. requires a real estate team to follow the same advertisement rules that apply to an individual licensee;

c. establishes specific advertising rules for electronic communications and specify the manner of disclosure of the name of the real estate brokerage for commercial messages in electronic communications; and

d. limits the number of experience points that a licensee may accumulate for a transaction not subject to an exclusive brokerage agreement to one quarter of the points available for a transaction that is subject to an exclusive brokerage agreement.

2. On March 7, 2017, a proposed rule amendment was filed that would:

a. allow an associate broker or sales agent affiliated with a dual broker through a property management company to simultaneously provide both property management services and real estate sales services if the licensee is designated by the dual broker as a Property Management Sales Agent and the licensee pays a designation fee to the Division; and

b. allow a principal broker to notify an associate broker or sales agent by email through RELMS that the broker has terminated the broker's affiliation (effective ten days after the date of the email) with the associate broker or sales agent, or effective immediately if the broker notifies the licensee by certified mail of their intention to disassociate the licensee from the brokerage.

Public comment will be received on the proposed rule amendment through May 1, 2017.

Timeshare and Camp Resort

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

Didn't Renew
Your Mortgage
License?



- Any individual desiring to hold a mortgage license that did not renew or reinstate their license by February 28th, will need to contact the Division to determine the requirements to complete in order to be relicensed.
- Expired entities can directly request to be licensed in the NMLS.

EMAIL SCAM ALERT

The Division of Real Estate was recently made aware of an alert sent to licensees in Colorado. It seems that there is never an end to email phishing scams. According to the Colorado Division of Real Estate, there are cybercriminals who are targeting appraisers with a new email phishing scam. Based on the way the scam works, any licensee could be the target, not just appraisers.

How it Works

An email is sent to a licensee stating that a complaint has been filed against them. The email has an attachment, usually a pdf, titled: complaint####. The recipient is told that they have seven days to respond in writing to the attached complaint. When the licensee clicks on the pdf, malicious software is installed on their computer. Here is an example of an email received by an appraiser:

From: Department of Consumer Affairs [<mailto:compl.dep.notif@outlook.com>]
Sent: Monday, January 30, 2017 11:05 AM
To: Licensee
Subject: The Department of Consumer Affairs

Dear Appraiser,

A complaint has been filed against your practice. Enclosed is a copy of the complaint which requires your immediate response. You have 7 days to file a rebuttal if you so desire. You may view a copy of the complaint at the link below.

[complaint98947.pdf](#)

You are required to investigate the alleged complaint and notify this office in writing (by facsimile, email, or written letter) no later than seven (7) calendar days after receipt of this letter whether the alleged complaint exists. If so, specify the corrective action you have taken and the estimated date when the correction will be completed.

The Department of Consumer Affairs cannot render legal advice nor can the Department of Consumer Affairs represent individuals or intervene on their behalf in any civil or criminal matter.

Please review the enclosed complaint. If filing a rebuttal please do so during the specified time frame.

If you do not respond, an inspection of your workplace may be conducted which may result in citations and monetary penalties.

Sincerely,
The Department of Consumer Affairs

How to Protect Yourself

First, always look at the email address the email was sent from. In this case, the email address is an outlook.com email address. All emails from the Division of Real Estate will end with utah.gov. Holding your cursor over the attachment or link will also assist in identifying a phishing scam. A link to a malicious website can be disguised as an attachment. When holding your cursor over the attachment you should be able to see if it is an attachment or a link to a website. The attachment in this article is actually a link to the Division of Real Estate's website, not a pdf. For more information on how to protect yourself from phishing scams, visit staysafeonline.org.

Utah Division of Real Estate

The Division of Real Estate is offering a FREE 3 hour CORE continuing education course for real estate, appraiser, and *mortgage licensees. (*Mortgage licensees will receive 2 hours of credit to fulfill their state specific CE requirement).

Jonathan Stewart, Director of the Division of Real Estate, Mark Fagergren, Director of Licensing and Education, and Kadee Wright, Chief Investigator, will discuss current issues and hot topics facing the real estate, mortgage, and appraisal industries. They will also be available to answer any questions or concerns you may have as a licensee.

There continues to be no charge to attend the Division CARAVAN. However, if you can not attend please be courteous and cancel your registration at least three business days prior to your scheduled event.

VERNAL

April 18, 2017
9:00am - Noon
Springhill Suites Marriott
1205 W Highway 40

PARK CITY

April 20, 2017
9:00am - Noon
Park City Marriott
1895 Sidewinder Dr.

LOGAN

April 27, 2017
1:00pm - 4:00pm
Bridgerland Applied
Technology Center
1301 N 600 W

PROVO

May 2, 2017
9:00am - Noon
Utah Valley Convention Center
220 W Center St.

LAYTON

May 11, 2017
9:00am - Noon
Davis Convention College
1651 N 700 W

MOAB

May 16, 2017
9:00am - Noon
Grand Center
182 N 500 W

RICHFIELD

May 17, 2017
9:00am - Noon
Sevier County Admin.
Building
250 N Main St.

CEDAR CITY

May 18, 2017
9:00am - Noon
Springhill Suites Marriott
1477 S Old Hwy 91

ST GEORGE

May 19, 2017
9:00am - Noon
Dixie State University,
Browning Learning Center
Dunford Auditorium
225 S 700 E

Reserve Your Seat Early

Seating is Limited

***Stand-by Seating is
NOT Guaranteed***

[CLICK HERE FOR ONLINE REGISTRATION](#)

CARAVAN 2017