

Utah! DIVISION of REAL ESTATE NEWS

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

Gary R. Herbert, Governor • Francine A. Gian, Executive Director • Deanna Sabey, Division Director

SECOND QUARTER 2010

REAL ESTATE LICENSEES VS. PROFESSIONAL TRADE ORGANIZATION MEMBERSHIP

We are receiving calls from real estate licensees expressing some confusion regarding whether Division of Real Estate regulations and requirements are related to the policies of professional trade organizations such as multiple listing services. These organizations are private professional associations, which independently establish their membership standards and policies. Such organizations are private, and the Division does not regulate their activities.

The Division of Real Estate, according to statute, issues sales agent, associate broker, and principal broker licenses to individuals performing real estate activities in Utah. Real estate agents may elect to join private professional organizations such as multiple listing services and boards of realtors. Membership in professional trade organizations is a personal choice made by the licensee and is NOT a state licensing requirement.

Licensees have expressed that many in the industry have formed the impression that they MUST belong to a professional organization in order to maintain an active real estate license. That statement is not accurate. Membership in a professional trade organization is NOT a requirement to have an active real estate license in the State of Utah.



-NEW- CONTINUING EDUCATION SEARCH ENGINE

During the 2010 CARAVAN presentations, the Division highlighted an exciting new continuing education search engine, which can be found on the front page of the Division's website at <http://www.realestate.utah.gov/education.html>.

This easy-to-use course search feature will assist all real estate, appraisal and mortgage licensees* in simply and conveniently searching for Division-approved continuing education course offerings.

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From the Director's Desk



Deanna Sabey

be able to continue

The Division made great strides in the first six months of 2010 to improve communication with licensees. We covered many of these efforts, including our e-newsletter, on-line complaint process, fee schedule, CE on-line course search, etc., during the Division Caravan that took place this spring. Caravan allowed us the opportunity to communicate with licensees face-to-face, and we hope the Division will be able to continue that tradition in future years.

We're planning additional "upgrades" to better communicate with our licensees. In the works are: e-mail renewal notices, e-mail notices of proposed rule changes for those who opt to participate, stipulations and orders on-line, an on-line calendar, and licensee phone apps.

Our mortgage licensing staff just passed a huge milestone in the conversion process from Utah's licensing system to the NMLS (National Mortgage Licensing System). May 31st was the deadline for loan originators, associate lending managers, principal lending managers, and entities to transition onto the NMLS. Any licensee who did not transition on or before May 31st will not be able to renew at the end of the year and will have to start the licensing process from the beginning.

In an effort to reach all mortgage licensees regarding the May 31st deadline, we sent out letters and e-mails, included charts and articles in newsletters and on the Division's web-site, conducted seminars, and even launched a media blitz that included radio, TV, and the print media.

Our mortgage licensing specialists were inundated with thousands of phone calls the last couple of weeks before the deadline, and they even helped many walk-in licensees looking for NMLS transition assistance. Fifty-

seven percent of mortgage licensees met the deadline and transitioned onto NMLS. Congratulations to those licensees who transitioned and to our hard-working mortgage licensing staff!

With the transition process complete, mortgage licensees who licensed before 1/1/2010 are ready for the next phase—certification of pre-license education and Utah state exam. Due to functionality and production delays by the NMLS, the Division extended the certification deadline to July 29, 2010. Therefore, transitioned licensees will have until **July 29, 2010** to certify their education and testing through NMLS. Anyone who fails to pay the \$15.00 fee and certify education by the July 29th deadline will face having to take 20 hours of NMLS pre-license education in order to renew at the end of this year. In addition to the 14 hours of continuing education hours required for renewal, a licensee who fails to certify education will be required to take a total of 34 hours of education in order to renew. Anyone who fails to pay the \$5.00 exam certification fee by July 29th, will have to take both the Utah loan originator state examination and the NMLS national examination in order to renew. Those licensees eligible for education and testing certifications are listed on the DRE website at <http://www.realestate.utah.gov/>. If you are eligible for the certification, you will receive an e-mail from NMLS with instructions for payment of the education certification and testing certification fees.

Mortgage licensees have had to pay close attention to NMLS deadlines this year. There are a few more to go. The next deadline after July 29th is the December 31, 2010 deadline. A number of components must be completed and submitted to NMLS by that date before a licensee will be eligible for the renewal process. Plan wisely.

December 31st deadlines:

1. Submit fingerprints to NMLS and request a background check from NMLS.
2. Take AND pass the NMLS national exam. If a licensee fails the exam, that licensee will have to wait 30 days to retest. After four unsuccessful attempts to pass the exam, the licensee must wait 180 days before retesting. By then, the deadline is very likely to have come and gone. Without a passing score, no renewal can occur.
3. Complete 14 hours of DRE or NMLS continuing education.

Licensees should book now to take the exam and give themselves time in case they don't pass. The testing centers will be busy during the last few months of the year, so it might be very difficult to find a testing slot available.

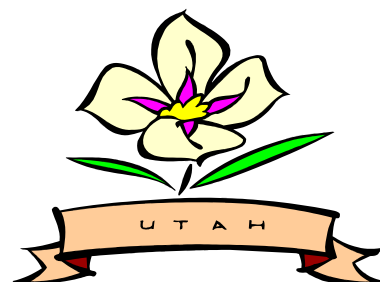
Mortgage licensees who have successfully transitioned, certified for education and testing, gone through NMLS-approved fingerprinting and requested a background check through NMLS, paid required fees, taken and passed the NMLS national exam, and completed 14 hours of DRE or NMLS continuing education can begin the license renewal process on November 1st. They have until December 31st, 2010 to complete renewal. Please see http://www.realestate.utah.gov/TransitionChart_March2010.pdf for an excellent chart detailing the entire process. If you need additional help, please contact Division staff at 801-530-6747, #3.

I wish you the best in navigating through the road rally of NMLS deadlines to the finish line. Jumping through all the NMLS hoops and meeting all the deadlines is somewhat akin to finishing a master's degree program with a series of project deadlines. If licensees meet all of the deadlines, they will be able to renew their licenses at the end of 2010. While this is perhaps not quite as exciting as saying you have a master's degree, it is certainly better than starting the licensing process over as a new applicant.



CHECKLIST FOR MORTGAGE LICENSEE RENEWAL (licensed pre-1/1/10)

- **transition onto NMLS by 5/31/10**
- **certify for education and testing by 7/29/10**
- **request a federal criminal background check and provide fingerprints to the NMLS by 12/31/10**
- **prior to renewal make any necessary changes to your record in the NMLS system.**
- **pay required fees**
- **take and pass the NMLS national exam by 12/31/10**
- **complete 14 hours of DRE or NMLS CE by 12/31/10**
- **submit an application for renewal by 12/31/10**



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-NEW- CONTINUING EDUCATION SEARCH ENGINE

The search engine allows you to specify whether you are interested in core or elective subjects, and whether you prefer online or classroom courses. You can also choose to search for courses alphabetically by title or by course provider name. If you want to look at all courses titles that have been approved on a particular course subject or key word, you now have a convenient system that enables you to accomplish your goal.

For example: If you want a list of all approved real estate courses covering short sales, you would follow these steps:

Step 1: Select "Real Estate" from the course category pull-down menu.

Step 2: Click the check boxes for the "Core" and "Elective" options and for the "Classroom" and "Online" options.

Step 3: Type the term "short sale" in the Course Title field. (Don't use quotation marks.)

Step 4: Choose the option to sort the results "by Course".

Immediately thirty-five different courses on short sales are displayed.

You can further define your search by having the CE search engine sort the thirty-five courses by number of CE hours per course. Doing so will show you that, of the thirty-four CE courses covering short sales, the CE hours for the classes range from a maximum of eight hours down to one CE credit hour. As an additional helpful feature, core classes are highlighted in yellow.

Real estate licensees can now quickly locate providers of the 12-hour New Agent Sales Course. Appraisers can now quickly find all 7-hour National USPAP Update Course providers or search for both qualifying as well as continuing education courses.

Try out the new CE search engine to experience this innovative tool to locate CE course offerings. This system has been designed so that anyone can use it, even those who consider themselves to be "non-technical users". Go ahead...try out the new search engine to locate courses on subjects that you need to further your understanding of the ever-changing real estate industry, or that simply pique your curiosity.

*Mortgage licensees will only be able to use the new CE search engine until the end of this year. Beginning in 2011, only NMLS approved courses will qualify for mortgage continuing education. NMLS approved courses are found on the NMLS website at: <http://mortgage.nationwidelicencingsystem.org/profreq/education/mcc/Pages/CECourses.aspx>

Certified Education Courses

<p>Step 1: Select Course Category:</p> <p>Real Estate <input type="button" value="v"/></p>	<p>Step 2: Specify the Course Type & Setting:</p> <p><input checked="" type="checkbox"/> Core <input type="checkbox"/> Classroom</p> <p><input type="checkbox"/> Elective <input checked="" type="checkbox"/> Online</p> <p><input type="checkbox"/> New Agent</p>	<p>Step 3: Specify Search Criteria (if any)</p> <p>Course Title contains: <input type="text" value="SHORT SALES"/></p> <p>Provider Name contains: <input type="text"/></p>	<p>Step 4: Sort Results & Run Search</p> <p><input checked="" type="radio"/> by Provider <input type="radio"/> by Course <input type="radio"/> by Hours</p> <p><input type="button" value="Run Search"/></p>
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W2 or 1099... THAT IS THE QUESTION

PLMs frequently ask for clarification as to whether they are allowed to pay loan originators as independent contractors. The answer starts out simple, but quickly gets complicated. Here is the simple part: the Utah statute governing mortgage licensees does not address the issue, so the DRE does not impose or enforce a requirement either way. But if you think that means you have the option to go with either system, beware!

The mortgage statute is not the only law that governs mortgage companies. You are also subject to unemployment insurance laws and worker's compensation laws. So it is very important for you to understand how the agencies that enforce those laws view the relationship between a PLM and sponsored MLOs.

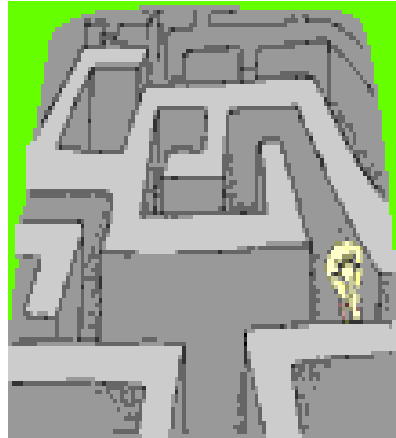
Under the mortgage statute, an MLO may not work for or with more than one PLM. In addition, PLMs have the responsibility to directly supervise the MLOs they sponsor and may be held responsible—and even liable—for an MLO's actions.

According to the Department of Workforce Services, these limitations and duties create a presumption under **Utah Code § 35A-4-204(3)**, which governs unemployment insurance, that an MLO is an employee rather than an independent contractor. Similarly, **Utah Code § 34A-2-103**, which governs worker's compensation, defines an independent contractor as a person who is not subject to the routine rule or control of the employer—a difficult showing to make given the supervisory duties imposed on PLMs by the mortgage statute.

If you are paying your MLOs as independent contractors, the DRE strongly suggests that you do some additional homework on this subject. Gabe Hooley, an attorney with the Department of Workforce Services, has graciously offered to discuss tax liabilities with anyone who has questions or concerns. You may contact him directly at 801-526-9638.



Where's That Rule?



The Division of Administrative Rules (DAR) is the agency that maintains Utah's administrative code, which contains all of the rules that govern licensees. To find a rule, go to the **DAR website homepage**. There you'll find a link to the **code**. All of the DRE rules are found in **Section**

R162. The rules governing the real estate profession are numbered R162-1 through R162-12. The rules governing the mortgage profession are grouped under R162-2c and divided into subsections that correlate to similar sections in the **mortgage statute (Section 61-2c)**. The rules governing the appraisal profession are numbered R162-101 through R162-110. The rules governing the appraisal management profession are grouped under R150 with several subsections.

In addition to maintaining an online library of administrative rules, the DAR publishes the **Utah State Bulletin**, which contains draft versions of rules that are being proposed. The bulletin is published twice each month, on the 1st and the 15th. Proposed rules must be published for at least 30 days before they are finalized so that the public may review them and **make comments**. The DRE continuously submits rules for publication and welcomes public comment. In order to keep current with the proposed regulations, visit the DAR website regularly.



RE-REGISTRATION OF EXISTING APPRAISAL TRAINEES



The Division has been registering appraiser trainees since October of 2004 (over 5 ½ years). Many of these trainees have subsequently become licensed or certified appraisers. Some, however, have remained as trainees for a number of reasons (primarily they lack sufficient experience required to advance).

According to appraisal administrative rules that went into effect earlier this year, any appraiser trainee who registered with the Division without undergoing a background check shall re-register with the Division according to the following schedule:

- 1) A trainee who **registered prior to January 1, 2008 must re-register by January 1, 2011;**
- 2) A trainee who **registered during the 2008 calendar year must re-register in 2011 by the anniversary of the trainee's registration date;**
- 3) A trainee who **registered on or after January 1, 2009 must re-register on the two-year anniversary of the registration date.**
- 3) All court documents related to any past criminal proceeding;
- 4) Complete documentation of any sanction taken against any license in any jurisdiction;
- 5) A signed letter of waiver authorizing the Division to obtain the fingerprints of the applicant, review past and present employment records, review education records, and conduct a criminal background check;
- 6) **Evidence of having completed the 28 hours of continuing education required for renewal** (including a Division approved 7-hour National USPAP Update Course; and 21 additional hours of Division-approved continuing education. **All continuing education must have been taken within the two years prior to re-registration);**
- 7) Payment of the fee for the application and the criminal background check. Once approved, a trainee registration is valid for two years and then must be renewed before the expiration date printed on the registration certificate. In order to renew a registration, a trainee must complete continuing education.

Appraiser trainees are required to participate in the Division's registration program in order to maintain and increase their skills, knowledge, and competency in real estate appraising. In order to re-register, a trainee shall submit the following to the Division:

- 1) A completed application (see trainee registration form at http://realestate.utah.gov/appraisal/app_trainee_reg.pdf);
- 2) Two fingerprint cards that have been scanned at a testing center or at any local police department;

Once approved, a trainee registration is valid for two years and then must be renewed before the expiration date printed on the registration certificate. In order to renew a registration, a trainee must complete continuing education.

If the fee and documentation for re-registration are not received by the deadlines outlined above, the trainee registration shall expire. It is grounds for disciplinary sanction if, after a registration has

expired, a trainee continues to perform work for which the trainee is required to be registered.

The deadline to re-register as an appraisal trainee is fast approaching. Trainees need to make sure that as part of their re-registration, they complete the required continuing education (taken within two years of the deadline). Notifications will be mailed to trainees approximately six weeks prior to the re-registration deadline, at the mailing address listed in Division licensing records.



Staff Spotlight



Jennie Jonsson Hearing Officer

Jennie Jonsson began working as the Division's Hearing Officer last June. She is an attorney, and she ran a small title company prior to joining the DRE staff, so she feels very much at home working on issues related to real estate. Her

primary duties as the Hearing Officer are to assist in the review of licensing applications, draft orders for the Real Estate Commission, Mortgage Commission, and Appraisal Board, and write administrative rules. In the past, she has worked as a technical writer and as both an English teacher and a debate coach in the public schools. She has three children and loves the state's 4-day workweek because it lets her spend Fridays at home being a mom. On rare occasion, she participates in a bit of community theater. (She is a particular fan of Gilbert & Sullivan operettas.) Jennie loves the real estate industry and is very happy to be working for the DRE.



SHORT SALE SCAMS

In today's real estate market, short sales are a given, and for a while the short sale will be a prominent part of our marketplace. Who knows how long--



one year, three years--it is anyone's guess. There are individuals and entities creating scams that follow the short sale market. As long as we have to deal with short sales, take notice, because there are some pitfalls and warning signs to be aware of.

A short sale transaction occurs when the seller owes more on the residence than the residence can sell for in the marketplace. The buyer and seller agree on a price and enter into a contract. The lender must accept less money, or an amount short of, the outstanding loan balance (a short sale). This type of transaction is slightly more complicated than a transaction where the contract price is sufficient to pay off the seller's mortgage, but it is still fundamentally the sale of a residential property, and in our state with few exceptions this requires the services of a real estate licensee. However, not all real estate licensees are aware of the mechanics of a short sale transaction.

Therefore, unlicensed individuals and entities have entered into this arena to operate as "facilitators" and "short sale experts." Some are legitimate and are working with real estate licensees. But others are trying to provide the same service as a licensee without adhering to the rules--and they are conducting unlicensed activities. Those unlicensed activities are a violation of our statute and rules.

A simple example of a scam might look like this: A seller who is facing foreclosure must sell the home. The seller owes more money on the loan than the property is worth on the market.

Second Quarter 2010

Licensing Actions & Disciplinary Sanctions



Please note that there are 30 days after the order date for a licensee or an applicant to file a request for agency review of the order, and that there are 30 days after the issuance of an order on review for a licensee or an applicant to file a petition for judicial review. Some of the orders listed may be within those appeal periods.

APPRAISAL

JOHNSON, MATTHEW S., Certified Residential Appraiser license, St. George, UT. In a March 24, 2010 stipulation and order, Mr. Johnson agreed to pay a civil penalty of \$1,000 and take a 15-hour course titled "Report Writing and Case Study." Mr. Johnson completed an appraisal of a property in Brian Head, Utah, in which he misrepresented the neighborhood description, neighborhood market conditions, improvements, and site description as to view and utilities. Case number AP 47434.

RICHEY, DAVID B., Certified Residential Appraiser license, American Fork, UT. In a March 24, 2010 stipulation and order, Mr. Richey agreed to have his license suspended pending his providing to the Division a complete list of all appraisals performed between January 1, 2006 and December 31, 2007. Mr. Richey promptly provided the list, and his license was placed on probation, as further agreed in the stipulation. In addition, Mr. Richey agreed to pay a civil penalty of \$10,000, and he is prohibited from supervising appraisal trainees for the duration of the licensing period. On June 27, 2008 and again on September 27,

2008, Mr. Richey provided appraisals for a property in Bald Mountain. Mr. Richey used the same work file and comparables for both appraisals and arrived at the same market value of \$2.6 million, a substantially inflated value coincidental with approximate accuracy to predetermined values established by earlier appraisal reports and/or Mr. Richey's clients, intended users, or other interested parties. In so doing, he used inappropriate comparables, omitted analysis of those comparables, failed to research sources of information that would have revealed the comparables to be distressed properties, and failed to include or note the existence of a superior comparable immediately adjacent to the subject and priced at an amount less than half Mr. Richey's opinion of value. Case number AP 42880.

APPRAISAL MANAGEMENT

MORTGAGE INFORMATION SERVICES, INC., AMC registration, Cleveland, OH. In a May 27, 2010 order, conditional registration automatically revoked pursuant to **Utah Code § 61-2e-203(3)** for failure of main control person Leonard Stein-Sapir to accurately disclose a criminal history. Case number AMCFP-10-003.

VALUE TREND SOLUTIONS, AMC registration applicant, Phoenix, AZ. In a June 1, 2010 order by the Board, registration issued on probation due to a finding by the Arizona Board of Appraisal that control person Jay Josephs allowed an appraisal of a high-end property to be completed by a licensed appraiser and, thereafter, signed in a supervisory capacity without inspecting the property. According to the Arizona Board of Appraisal, Mr. Josephs's actions violate USPAP Standards Rules 1-1(a), (b), and (c); 1-2(e); 1-4(b); 2-1(a); 2-2(b)(viii); the USPAP Ethics Rule as to conduct and recordkeeping; and Arizona Administrative Code § R4-46-31. Mr. Josephs is appealing the findings of the Arizona Board.

MORTGAGE

ACCEPTANCE CAPITAL MORTGAGE CORP., Mortgage Entity renewal applicant, Spokane, WA. In a May 10, 2010 order following a hearing before the Commission,

renewal application approved with restriction. License is suspended until the company notifies the Division in writing as to the current corporate structure and ownership and provides a corporate resolution, signed by the owner of the company, designating the person who is assigned as the company's PLM and authorized to act as such in the name of Acceptance Capital Mortgage Corp.

CABRERA, MIGUEL ANTONIO, Mortgage Loan Originator license, Sandy, UT. In a May 5, 2010 stipulation and order, Mr. Cabrera agreed to pay a civil penalty of \$2,000. In violation of Utah Code § 61-2c-201, Mr. Cabrera transacted the business of residential mortgage loans during a time when his license was expired. Case number MTG 48819.

CC BROWN LAW OFFICES, unlicensed person, Midvale, UT. In a May 5, 2010 stipulation and order, Charles Craig Brown, as owner of CC Brown Law Offices, agreed to pay a civil penalty of \$5,000. In violation of Utah Code § 61-2c-201, the company solicited for and provided loan modifications without being properly licensed by the Division. Case number MTG 46896.

COMMUNITY LENDING GROUP, INC., Mortgage Entity license, Riverton, UT. In a May 5, 2010 stipulation and order, the company agreed to pay a civil penalty of \$2,000. In violation of Utah Code § 61-2c-301(1)(m), the company distributed advertising materials that included the logo of a government entity, as well as fine print that did not match the information being advertised in the main text of the letter. Case number MTG 49247.

HO, LAURIE, Mortgage Loan Originator license, Garden Grove, CA. In a May 19, 2010 order, conditional license revoked pursuant to Utah Code § 61-2c-202(4)(d)(2009) for failure to accurately disclose a criminal history. Case number MGFP-10-239.

HODAVERDIAN, NADER C., Mortgage Loan Originator license, Sandy UT. In a March 23, 2010 order, automatic revocation of conditional license reversed

on a finding that Mr. Khodaverdian had a reasonable good faith belief at the time of application that he had no criminal history to disclose. Case number MGFP-10-236.

MILLINGTON, TRENT, Mortgage Loan Originator applicant, Lehi, UT. In a March 4, 2010 order following a hearing before the Commission, license issued on probation for the initial licensing period.

PERKO, PATRICK STEVEN, Principal Lending Manager license, St. George, UT. In a May 5, 2010 stipulation and order, Mr. Perko agreed to the revocation of his principal lending manager license. In violation of Utah Code § 61-2c-301, Mr. Perko signed his business partner's signature on loan documents. He thereafter pleaded guilty to one charge of forgery. Case number MTG 49155.

RYAN, MICHAEL, Mortgage Loan Originator license, Salt Lake City, UT. In a May 25, 2010 order, conditional license revoked pursuant to Utah Code § 61-2c-202(4)(d)(2009) for failure to accurately disclose a criminal history. Case number MGFP-10-241.

SPEIRS, SHANE, Principal Lending Manager license, West Jordan, UT. On May 5, 2010, Mr. Speirs surrendered his license while under investigation by the Division.

STANLEY, MATHEW, Mortgage Loan Originator license, Salt Lake City, UT. In a March 4, 2010 order, automatic revocation of conditional license reversed on a finding that Mr. Stanley had a reasonable good faith belief at the time of application that he had no criminal history to disclose. Case number MGFP-10-235.

WATERS, MERRILL J., Mortgage Loan Originator license, Salt Lake City, UT. In a May 19, 2010 order, conditional license revoked pursuant to Utah Code § 61-2c-202(4)(d) (2009) for failure to accurately disclose a criminal history. Case number MGFP-10-240.

W.J. BRADLEY MORTGAGE CAPITAL CORP., Mortgage Entity renewal applicant, South Jordan, UT. In an April 28, 2010 order, prior order placing license on probation is vacated on a finding that the company submitted past renewal applications in which it appropriately disclosed various fines, consent orders, and similar licensing sanctions that were imposed on the company in other states between the years 1998 and 2008.

REAL ESTATE

ARMKNECHT, CARL E., Principal Broker renewal applicant, Salt Lake City, UT. In a May 10, 2010 order, license issued on probation due to Mr. Armknecht's having been charged during the past term of licensure with possession of controlled substance when drugs were found in a construction vehicle he was driving. Mr. Armknecht entered into a plea in abeyance agreement to resolve the case.

BOSS, JOSEPH W., Sales Agent applicant, Riverton, UT. In a March 31, 2010 order, license issued on probation due to criminal history involving two misdemeanor traffic offenses, compounded by Mr. Boss's failure to provide full disclose of the charges and sentences as required by the licensing application.

BRIMHALL, ZACH G., Associate Broker renewal applicant, Bluffdale, UT. In a March 18, 2010 order following a hearing before the Commission, application denied due to Mr. Brimhall's failure to satisfy six civil judgments entered against him on allegations including withholding payment from a carpet supplier, withholding payment from a contractor, withholding a commission from a real estate agent, and refusing to vacate a property to which he had no right of possession.

BRYAN, KEVIN, Sales Agent license, Hooper, UT. In a March 4, 2010 order, automatic revocation reversed on a finding that Mr. Bryan had a reasonable good faith belief at the time of application that he had no criminal history to disclose. Case number REFP-10-195.

CAOQUETTE, LEEANN, Sales Agent applicant, Ogden, UT. In a March 15, 2010 order, license issued on probation due to Ms. Caouette's failure to fully disclose a criminal history involving two alcohol-related misdemeanor offenses.

CASEY, DAN L., Sales Agent renewal applicant, Ogden, UT. In a March 31, 2010 order, license issued on probation due to a conviction for driving without insurance, and compounded by Mr. Casey's failure to report his conviction to the Division within ten business days as required by [statute](#).

COHEN, MATTHEW R., Sales Agent applicant, Salt Lake City, UT. In a March 8, 2010 order, license issued on probation due to criminal history involving three cases in which Mr. Cohen was prosecuted for illegal possession, use, or transport of controlled substances.

CRAGUN, MICHAEL N., Principal Broker license, Morgan, UT. In a May 19, 2010 stipulation and order, Mr. Cragun agreed to pay a civil penalty of \$2,000. In violation of Utah Code § 61-2-11(14) [now renumbered as [§ 61-2f-401\(12\)](#)], Mr. Cragun failed to exercise reasonable supervision over the activities of a sales agent who was paid a commission during a time when the agent was not actively licensed. Case number RE 47955.

CROWE, IAN T., Sales Agent renewal applicant, St. George, UT. In an April 21, 2010 order following a hearing before the Commission, application approved with restriction. License is suspended for one year from the date of the order. During the suspension, Mr. Crowe shall resolve six criminal cases filed against him on charges of driving under the influence of alcohol/drugs, open container/drinking alcohol in vehicle, expired registration and various other traffic offenses, burglary of a vehicle, unlawful possession of schedule I-V controlled substance, intoxication, and violation of interlock restriction. If Mr. Crowe resolves these cases and commits no further violations of law during the period of suspension, his license shall be placed on probation.

DEBOER, GORDON, Principal Broker renewal applicant, Newport Beach, CA. In a May 4, 2010 order, license issued on probation due to Mr. DeBoer's having been fined by the state of Washington for operating as a mortgage originator

without a license, compounded by his failure to respond to Division requests for information about the case.

FROERER, KELLY MCCARTY, Sales Agent renewal applicant, Ogden, UT. In a May 10, 2010 order, license issued on probation due to Mr. Froerer's having pleaded no contest to charges of child abuse/neglect, interruption of communication device, and simple assault during the past term of licensure, and compounded by his failure to report his plea to the Division within ten business days as required by [statute](#).

GALLAGHER, KEVIN, Principal Broker renewal applicant, Pleasant Grove, UT. In a May 10, 2010 order, license issued on probation due to Mr. Gallagher's having pleaded no contest to a charge of patronizing a prostitute during the past term of licensure, and compounded by his failure to report his plea to the Division within ten business days as required by [statute](#).

GUTIERREZ, DANNY, Sales Agent renewal applicant, Sandy, UT. In a May 3, 2010 order, license issued on probation due to Mr. Gutierrez's having charges of felony burglary and misdemeanor assault pending against him.

HEDLUND, AARON W., Sales Agent applicant, Salt Lake City, UT. In an April 26, 2010 order, license issued on probation due to Mr. Hedlund's failure to fully and accurately disclose a criminal history involving a plea of nolo contendere to charges of possession of controlled substance and unlawful possession of paraphernalia.

HOLLEY, LANALEE, Sales Agent renewal applicant, North Ogden, UT. In a May 24, 2010 order, license issued on probation due to Ms. Holley having entered into a plea in abeyance agreement on a charge of issuing a bad check during the past term of licensure.

HONARVAR, KAYVON, Sales Agent applicant, Salt Lake City, UT. In a March 31, 2010 order, license issued on probation due to Mr. Honarvar's failure to fully and accurately disclose a criminal history involving driving while intoxicated.

JEPSON, CINDY D., Sales Agent license, Layton, UT. In a March 4, 2010 order, automatic revocation reversed on a finding that Ms. Jepson had a reasonable good faith belief at the time of application that she had no criminal history to disclose. Case number REFP-10-196.

KIRBY, SHAWN, Sales Agent applicant, West Jordan, UT. In a May 20, 2010 order following a hearing before the Commission, license issued with restriction. License is suspended until Mr. Kirby provides evidence from the Division of Professional Licensing that he has satisfied or otherwise discharged a fine of \$500 and an obligation to reimburse the lien recovery fund for \$56,671.77 paid out to satisfy debts that Mr. Kirby incurred in his operation of a construction company.

LANCASTER, BRADLEY R., Sales Agent license, South Jordan, UT. In an April 21, 2010 stipulation and order, Mr. Lancaster agreed to the revocation of his residual right to reinstate his expired license within the one-year reinstatement period. He further agreed not to reapply for a new license for a minimum of five years. In violation of Utah Code § 61-2-11(18), [now renumbered as [§ 61-2f-401\(16\)](#)], Mr. Lancaster jeopardized the public welfare by defaulting on a trust deed note that he had signed in favor of certain investors. Mr. Lancaster failed to record the trust deed, thus depriving the investors of a foreclosure remedy. Following suit, the court found Mr. Lancaster liable to the investors for damages totaling \$1,109,299.80. Case number RE 49005.

LINDAHL, SPENCER J., Sales Agent license, Orem, UT. In an April 21, 2010 stipulation and order, Mr. Lindahl agreed to pay a civil penalty of \$1,000. In violation of Utah Code § 61-2-11(5) [now renumbered as [§ 61-2f-401\(3\)](#)], Mr. Lindahl prepared and presented an offer to purchase property during a time when his license was expired. Case number RE 45547.

LOVELL, TOM, Sales Agent applicant, Rexburg, ID. In a May 11, 2010 order, license issued with restriction. License is immediately suspended for a period of 30 days and thereafter placed on probation for the remainder of the initial licensing period due to criminal convictions for driving under the influence of alcohol, three of which Mr. Lovell failed to disclose in response to the licensing questionnaire.

continued on next page

MCENTEE, CHRISTOPHER, Sales Agent applicant, Briarcliff Manor, NY. In a March 31, 2010 order, license issued on probation due to a conviction for impaired driving, for which Mr. McEntee will remain on probation with the court until February of 2011.

MILLER, CHRISTINE, Sales Agent renewal applicant, Draper, UT. In a May 10, 2010 order, license issued on probation due to a conviction for disorderly conduct, compounded by Ms. Miller's failure to disclose her conviction to the Division within ten business days as required by [statute](#).

OSBORNE, BRENT B., Sales Agent reinstatement applicant, Salt Lake City, UT. In a March 15, 2010 order, application denied due to Mr. Osborne's having been charged during the past term of licensure with felony burglary and felony theft, and compounded by his failure to respond to two Division requests for information about the criminal case.

PARK, DANIEL R., Sales Agent applicant, Ogden, UT. In a June 1, 2010 order, license issued with restriction. License is suspended for a period of 30 days and thereafter placed on probation due to criminal history involving assault, criminal mischief, disorderly conduct, and various traffic violations, and compounded by Mr. Park's failure to disclose the full extent of his criminal history in response to the licensing questionnaire.

REECE, AARON D., Sales Agent applicant, American Fork, UT. In a March 15, 2010 order, license issued on probation due to criminal history involving the misuse of alcohol and, additionally, due to outstanding civil judgments.

ROSS, WILLIAM J., Sales Agent license, Morgan, UT. In a May 19, 2010 stipulation and order, Mr. Ross agreed to pay a civil penalty of \$4,000. In violation of Utah Code § 61-2-11(5) [now renumbered as § 61-2f-401(3)], Mr. Ross completed at least two transactions during a time when his license was expired. Case number RE 47942.

SALAZAR, DANIEL, Sales Agent applicant, Clearfield, UT. In a May 27, 2010 order, license issued on probation due to Mr. Salazar's having entered into a plea in abeyance agreement on a charge of making a false claim for unemployment compensation, as well as a lengthy history of traffic violations, including operating without insurance, failing to register, and speeding.

SELIN, SEAN F., Sales Agent applicant, Salt Lake City, UT. In a March 31, 2010 order, license issued on probation due to criminal history involving disorderly conduct, intoxication, and driving under the influence of alcohol/drugs, and including court findings of Mr. Selin's having violated his probation and otherwise failed to comply with court orders.

SHIBONIS, JAMUNA, Sales Agent applicant, Salt Lake City, UT. In an April 21, 2010 order, license issued on probation due to criminal history of traffic violations, as well as three cases involving alcohol-related offenses where court dockets indicate that Ms. Shibonis violated her probation and otherwise failed to comply with court orders.

STANGER, LURAE, Principal Broker license, West Haven, UT. In a May 19, 2010 stipulation and order, Ms. Stanger agreed to pay a civil penalty of \$2,000. In violation of Utah Code § 61-2-11(14) [now renumbered as [§ 61-2f-401\(12\)](#)], Ms. Lurae failed to exercise reasonable supervision over a sales agent who was paid a commission during a time when the agent's license was expired. Case number RE 47956.

TERRY, BARBARA, Sales Agent applicant, Lehi, UT. In a March 16, 2010 order, license issued on probation due to criminal history involving driving under the influence of alcohol, compounded by Ms. Terry's failure to disclose the full extent of her criminal history in response to the licensing questionnaire.

TUCKER, NATHAN, Sales Agent applicant, Salt Lake City, UT. In a March 25, 2010 order, license issued on probation due to criminal history involving criminal mischief, unlawful detention, domestic violence in the presence of a child, and attempted failure to give name and assist at scene of accident, as well as evidence that, while commissioned as a notary public, Mr. Tucker was sanctioned for allowing another person to make use of his notary stamp.

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CEASE and DESIST

The following have been issued orders to cease and desist. Please note that Utah law allows 10 days for appeal of a cease and desist order. Some of the cases below may be subject to this appeal right or currently under appeal.

- Jonathan Richard Elowitz, Foothill Ranch, CA—alleged to have negotiated loan modifications without being properly licensed with the Division.
- JRE Law Group, Foothill Ranch, CA—alleged to have negotiated loan modifications without being properly licensed with the Division.
- Phillip A Kramer, Calabasas, CA—alleged to have negotiated loan modifications without being properly licensed with the Division.
- The Law Offices of Kramer & Kaslow, Calabasas, CA—alleged to have negotiated loan modifications without being properly licensed with the Division.
- Robert Joseph Buscho, Irvine, CA—alleged to have negotiated loan modifications without being properly licensed with the Division.
- United Law Group, Irvine, CA—alleged to have negotiated loan modifications without being properly licensed with the Division.
- Martin S. Wright, Ogden, UT—alleged to have negotiated loan modifications without being properly licensed with the Division.
- Theron D. Morrison, Ogden, UT—alleged to have negotiated loan modifications without being properly licensed with the Division.
- Westgate Resorts, LTD and Spring Sandlin—alleged to have allowed employees to misrepresent signatures on documents related to the purchase and sale of timeshare interests.



SHORT SALE SCAMS

The seller is contacted by one of these scammer facilitators. The scammer has a straw buyer ready to perform. An offer is written and accepted. The lender is notified of a potential sale and is asked to approve a sale price that is insufficient to pay off the seller's debt. In the



meantime, the scammer has been marketing the property to third parties and finds an end buyer who is willing to pay more for the property. The scammer closes on the straw buyer sale and then illegally flips the property to the end buyer, pocketing the difference in cash. The original lender is never aware that the property is being flipped; otherwise that lender would not have approved the short sale. Sometimes the scammers form L.L.C.s and joint venture agreements (JVAs) to accomplish their schemes.

There are also instances when these scammers tell the seller to move out of the property, and then allow an unaware tenant to take up residence. The scammers collect a lease amount from the unaware tenant. The tenant is then told that the property may be purchased on a lease option, and the scammers collect an option fee in addition to the monthly lease amount. The property is later foreclosed, and the unaware tenant loses his money and is evicted from the home.

The real damage to the public comes from unscrupulous individuals and entities taking advantage of unwary and uninformed buyers and sellers. They are stealing from sellers, lenders, and buyers and illegally flipping properties, involving unaware tenants, collecting high fees, charging lease option money, and generally wreaking havoc in our state. As real estate licensees, we have the responsibility to protect our clients and to protect the public and the industry to which we all belong. The Division of Real Estate wants to know about individuals and entities that are operating illegally. Do not hesitate to report these suspicious activities to the Division of Real Estate.



Appraiser Segmented Applicants

-Deadline Approaches-

IMPORTANT REPEAT ARTICLE

During 2007 many appraiser trainees, licensed appraisers, and certified residential appraisers submitted what is referred to as a “segmented application” in order to fulfill the educational requirements to obtain a higher level appraisal license. By submitting a segmented application, appraiser candidates were able to meet the educational requirement for the higher qualification appraiser license, while being granted additional time to meet the necessary experience and examination requirements.

The deadline to complete the experience and examination requirements under a segmented application is January 1, 2011 (three years after the deadline for submitting the required education). Nearly three years have gone by quickly and the deadline is rapidly approaching. Appraisal candidates who have submitted segmented applications **need to complete all remaining licensing requirements and receive the advanced level appraisal license by the January 1st deadline, or the segmented application will no longer be valid.**

The requirements that need to be completed before the deadline are:

1. Complete the required experience hours.
2. Submit an appraiser experience log application. The form can be found at: (http://realestate.utah.gov/appraisal/appr_experience_log_20100316.pdf).

Once you complete your experience and submit your experience log(s), the information will be reviewed and a determination made by the Appraiser Licensing and Qualification Board as to whether your experience qualifies you to sit for the appraisal exam for which you have applied. This process typically takes two months and might take up to four months if the board is inundated with a large number of experience applications submitted simultaneously.

3. Submit proof of having successfully passed, within the 90-day period preceding the date of application, the appraisal exam for which you have applied.
4. Submit the \$50 national registry fee.

Please focus your efforts to complete the segmented licensing process and, ultimately, to receive the advanced appraiser license BEFORE the January 1, 2011 deadline.

If you are unsuccessful in meeting this segmentation deadline, you will need to re-apply to receive the license **you** are seeking. To reapply, you will have to fulfill the appraisal qualifications requirements that are currently in effect, including the increased educational requirements.



2010 Division CARAVAN



The Division recently completed CARAVAN presentations in eight different communities throughout the state. This year's CARAVAN included stops in Logan, Layton, Provo, Park City, St. George, Richfield, Moab, and--for the first time--Sandy. The Division CARAVAN is an opportunity

for the Division to make presentations regarding new information pertaining to each of our licensing groups, and to interact and exchange information and ideas.

In past years, CARAVAN presentations were typically held in areas throughout the state that were remote from Salt Lake. This allows licensees to obtain some of their required continuing education in their own communities and from Division personnel, with whom they otherwise have little, if any, direct contact. In addition to learning about the concepts presented by the Division, licensees were able to share their thoughts and express their concerns about regulatory issues.



Division Director Deanna Sabey discussed her future goals and expectations for the Division, and outlined the Division's accomplishments from the past year. She also shared information pertaining to recently passed legislation that affects our professions. Mark Fagergren, the Division's Licensing/Education Director,

discussed industry changes and deadlines and introduced the new CE search engine to licensees. Enforcement Director Dee Johnson discussed the new types of fraud that his investigators are discovering in the marketplace. He also explained how legitimate short sale transactions can easily become a source for fraud when handled by unscrupulous practitioners.



The Division thanks those licensees who helped make the 2010 CARAVAN such a success!

Utah! NEWS DIVISION of REAL ESTATE

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Rules, Rules, Rules



Since the last newsletter, several rule amendments have been made effective. Here is an overview.

Appraisal

Rule R162-106-7 was amended on April 21, 2010 to require

appraisers to analyze both the sales and listing history of a subject property. Prior to this amendment, the rule stated that appraisers were required to analyze the listing history only. This amendment brings the rule into line with USPAP requirements.

Appraisal Management

The Appraisal Board has been hard at work on several amendments to the AMC registration and unprofessional conduct rules. These amendments will be published in the **Utah State Bulletin** on July 15, 2010. Public comments will be accepted for 30 days thereafter.

Mortgage

Rule R162-2c was made effective on April 7, 2010. On the same date, Rules R162-201 through 211 were repealed. The new rule implements a numbering system that correlates to the mortgage statute. For example, the statutory mortgage definitions are found in Section 61-2c-102, and the rule definitions are found in Rule R162-2c-102. In addition, the rule implements the new nationwide licensing, certification, and renewal regulations.

Amendments to Rule R162-2c were published on June 15, 2010. These amendments create the term "branch lending manager" to describe an ALM who is assigned to work from and oversee a branch office. They also refine the licensing and registration requirements to reflect changes at the national level. Find the text of the proposed rule in the **Utah State Bulletin**. Public comment will be accepted until July 15, 2010, and the amended rule is scheduled to go into effect on July 22, 2010.

Real Estate

Rule R162-2-2 was amended on May 25, 2010 to update the qualifications for licensure and renewal. As amended, a plea in abeyance to a misdemeanor charge involving fraud, misrepresentation, theft, or dishonesty no longer acts as an automatic bar to licensure. Similarly, a plea in abeyance to a felony charge during a term of licensure no longer acts as an automatic bar to renewal. These cases will be carefully reviewed by the Division and the Commission, and a license may be issued if it appears that an applicant is honest and truthful, and has integrity, reputation, and competence.

Rule R162-4-1 was amended on June 16, 2010 to relieve licensees of the obligation to personally attend all closings. Best practices still require the sales agent to attend the closing with the client, but licensees will not be subject to discipline if they conduct a closing by mail or in a virtual environment.

Rule R162-2-3 was amended on June 21, 2010 to update the continuing education requirement for renewal. The real estate statute requires 18 hours of continuing education, and this amendment changes the rule to match.



Electronic Newsletter!

**Are you reading your newsletter online?
The Division of Real Estate would like to
thank you for creating a RELMS account!**

If you know someone who has not received this newsletter please advise them to log on to www.realestate.utah.gov and create their very own Real Estate Licensing Management System Account! With so much information available why would you not want to create a RELMS account?



Kagie's Korner

May a mortgage licensee provide a seller with a toll-free number that potential buyers can use to get information about the property and to hear about options for financing? This question is asked quite often by mortgage licensees who are trying to capture a potential borrower. In order to provide these services on behalf of a seller, whether the property is listed with an agent or offered for sale by owner, a person must hold a real estate license issued under the Utah Real Estate Licensing and Practices Act. According to the statute, a real estate license is required in order to offer any assistance to homeowners trying to sell their property.



A program like this--where the potential borrower dials a mortgage licensee's toll-free number in order to access information about the size, number and type of rooms, price, etc.--is a violation of both the real estate statute and the mortgage administrative rules.

Utah Code § 61-2f-201(2)(b) (2010): Except as provided in Section 61-2f-202, an individual is required to be licensed as a principal broker, associate broker, or a sales agent if the individual performs, offers to perform, or attempts to perform one act for valuable consideration of offering for another person to buy, sell, lease, manage, or exchange real estate.

Utah Administrative Code § R162-2c-301(1)(b)(v)(D): A loan originator may not, unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including advertising the sale of real estate by use of any advertising medium.

By providing a toll-free number on behalf of a seller and using it to assist the seller in advertising property, the mortgage licensee violates licensing statutes and rules and faces possible disciplinary action, including a fine of up to \$5,000.00 per violation.

A mortgage licensee may, with the permission of a property owner, put a sign on a property to advertise a toll-free number. However, it must be clear that the potential borrower who calls the number is calling a loan officer solely for mortgage information, and not for information about the home or about how to purchase the home.

If, as a mortgage loan originator, you question what you may or may not do under your license, you should talk with your Principal Lending Manager. Your PLM is your first line of defense in complying with all state and national regulations.



Mortgage Branch Management

Under NMLS regulations, a mortgage branch must have a qualifying individual designated on or before November 1, 2010 to work from the branch location and oversee operations there. Under rules promulgated by the Mortgage Commission, this qualifying individual must be licensed as an ALM ([see R162-2c-201\(5\)](#)). Rules are currently proposed that create the term "branch lending manager," or BLM, to describe this individual. Regardless of the terminology, the bottom line is that any entity that operates a branch office after November 1, 2010 must assign a person who is licensed as a PLM to work from and manage the branch as the qualifying individual. Entities that fail to comply with these regulations will not be able to renew their licenses this fall.



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