

## Second Quarter 2017

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## Director's Message

# RESPA

## Real Estate Settlement Procedures Act



Jonathan Stewart

The Division often receives questions about the Real Estate Settlement Procedures Act (RESPA), more specifically, Section 8 of RESPA, which is the anti-kickback provisions section. Many of the questions we receive have to do with a builder's relationship with a preferred lender, desk rentals, and marketing service agreements. Because the majority of the questions we receive have to do with a preferred lender, that will be the focus of this article. Before we dive into the specifics, it is important to understand what RESPA says, as well as defining a few key terms.

Section 8 (a) of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2607 states:

(a) No person shall give and no person shall accept any fee,

kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

Utah Code §61-2c-102(nn) states:

Referral fee:

(ii) does not include:

(B) a payment made for reasonable promotional and educational activities that is not conditioned on the referral of business and is not used to pay expenses that a person in a position to refer settlement services or business related to the settlement services would otherwise incur.

Settlement Services is also a defined term in 12 U.S.C. § 2602:

(3) the term "Settlement Services" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the prep-

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aration of documents, property surveys, **the rendering of credit reports or appraisals**, pest and fungus inspections, **services rendered by a real estate agent or broker**, **the origination of a federally related mortgage loan, (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement (emphasis added);**

From the definition of settlement services, it is clear that all three industries the Division regulates can be affected by RESPA. If we look back at Section 8(a) of RESPA, basically stated, a settlement service provider cannot give or accept a fee, kickback, or thing of value in exchange for a referral. To be clear, RESPA Section 8(b) does not prohibit payment for services actually performed.

With this foundation, let us look at the most common questions the Division receives about preferred lenders:

**Q: Why can a builder offer free upgrades to potential clients if they use their preferred lender? Isn't that a RESPA violation?**

Many builders offer upgrades or some other incentive to use their preferred lender. Is this a RESPA violation? With the limited information provided, the answer would be "No." The first thing to keep in mind is that a builder is not a settlement

service provider. A builder offering incentives to use a preferred lender is not in and of itself, a violation. The preferred lender is a settlement service provider and cannot accept or give any fee, kickback, or thing of value for a referral. As long as the lender is not giving anything of value back to the builder, including paying for the upgrades or other incentives, there would not be a RESPA violation.

If the builder has an ownership interest in their preferred lender, does the scenario change? The answer would be the same as long as the builder discloses the relationship to the client at the time the referral is made. It is not always the builder giving the referral. For example, if a sales agent is representing a builder and the agent makes the referral, the agent should disclose the relationship at the time the referral is made. In addition to the disclosure of a relationship, "[t]here is one important rule regarding builders and their affiliated mortgage companies: If the home buyer decides to select a lender that is not affiliated with the builder, **the builder CAN take away the concessions but the builder cannot charge more for the home.**"<sup>1</sup>

**Q: Can a builder require a potential home buyer to pre qualify with the builder's preferred lender? Is this a RESPA violation?**

Based on the recent action by the CFPB against Prospect Mortgage, requiring pre qualification may be a RESPA violation. On January 31, 2017, the CFPB announced:

The Consumer Financial Protection Bureau (CFPB) today took action against Prospect Mortgage, LLC, a major mortgage lender, for paying illegal kickbacks for mortgage business referrals. The CFPB also took action against two real estate brokers and a mortgage servicer that took illegal kickbacks from Prospect. Under the terms of the action announced today, Prospect will pay a \$3.5 million civil penalty for its illegal conduct and the real estate brokers and servicer will pay a combined \$495,000 in consumer relief, repayment of ill-gotten gains, and penalties.<sup>2</sup>

Based on this announcement, all settlement service providers need to be cautious in their business relationships, how they are structured, and consider whether anyone is benefiting from providing what would be considered a referral. Based on the action, the CFPB found that Prospect was paying real estate brokers to do what is called "writing in." According to the press release: "Writing-in' meant that brokers and their agents required anyone seeking to purchase a listed property to obtain pre qualification with Prospect, even consumers who had pre qualified for a mortgage with another lender." The CFPB found that this was a violation of RESPA and one of the reasons Prospect and the real estate brokers were sanctioned. Requiring pre qualification is allowed under certain circumstances. In the Prospect case, a broker was being compensated for requiring pre qualification. There is case law which states that a seller

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can require pre qualification from a specific lender if it serves a legitimate business purpose. No two scenarios are exactly the same, so we recommend speaking to legal counsel if requiring pre qualification is something your company is exploring.

Dan Melson, the owner of and writer for Searchlight Crusade, a real estate and mortgage educational website, takes it a step further when he asks the following question:

Is a 'business relationship' a thing of value? It seems straightforward enough – I can't find anybody who says "no" – until we're talking about pre qualifying my clients with their favorite lender. Then I get all kinds of hemming and hawing about there being 'no money involved,' as if the relationship *itself* were not valuable.<sup>3</sup>

There doesn't appear to be anything from the CFPB agreeing with Melson's assertions here, but lenders should speak to their own legal counsel to decide what, if any, relationship they should have and how that relationship should be structured. Just being a preferred lender is not a violation of RESPA, but depending on the relationship's structure, the CFPB could come calling.

For additional resources on RESPA, the National Association of Realtors has a great Frequently Asked Questions page that goes through over 20 questions dealing with RESPA and corresponding answers found here: [NAR RESPA FAQ](#)

1. <http://ceforward.com/2014/08/for-loan-originators-how-to-compete-against-a-builders-lender/>
2. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-prospect-mortgage-pay-35-million-fine-illegal-kickback-scheme/>
3. [http://www.searchlightcrusade.net/2016/10/respa\\_orbids\\_steering\\_even\\_ju.html](http://www.searchlightcrusade.net/2016/10/respa_orbids_steering_even_ju.html)



In 2013, Governor Herbert introduced a new program called SUCCESS. Every state agency was encouraged to select a procedure or process and improve the efficiency by at least 25% within four years. The Division of Real Estate selected the processing time of applications not including online renewals. In 2013 the Division on average received 194.5 applications per month that required some action by a staff member. 74.6% of these were being processed within five days. Our goal was to increase the percentage of applications processed within five days. Over the course of the four year program the Division averaged 282 applications per month, an increase of 45% and processed an average of 85.4% of them within five days. In our most efficient month, we processed 94.5% of applications within five days. The measure used to calculate efficiency took into account the number of applications processed, the percentage of applications processed within five days, and the cost to process the applications. We were asked to do more without adding additional staff or resources. On June 1st Governor Herbert presented each Department that met or exceeded a 25% efficiency improvement with an award. We are happy with our improved efficiencies, but we continue to look for ways to improve our processes and procedures to more efficiently serve you the licensees and the public.





## BE AWARE of your SURROUNDINGS

- Jim Bolton, Appraisal Investigator

As appraisers we are taught to avoid photographs which include the images of homeowners or other persons when taking pictures of the subject and comparable properties. This article is a reminder to be aware of your surroundings and possible dangers while conducting an appraisal.

The Division received the following email from a fellow appraiser and the Division is offering a few precautions and a reminder to stay safe and protect yourself.

*“Last Friday 3-31-17, I was doing a VA appraisal in West Jordan and also doing some comparable photos. When taking my last comp photo in West Jordan I took a photo of the front of a home from the street from my car and people were inside the living room but not outdoors. A few minutes later I was out on a busy street and I noticed a car was following me and it followed me for about 20 minutes even when I started taking many turns. It appeared to be somebody that may have been inside the home of the last comp photo I took. Later I noticed at several red lights the person was filming my car and license plate number so I called my son to give him the address of the last comp photo I*

*took in case this guy became aggressive and I decided I would drive to the police department in the area [where] I live to see if he would follow me this far so we could talk with a policeman. He finally stopped following me so I assumed he would likely call the police in West Jordan to indicate someone took a photo of the front of his house and I expected that the police may call me on Friday and I could explain that I was a real estate appraiser taking comp photos as part of my due diligence and scope of work so the police could tell this [to the] comp property owner.*

*However, about 60-90 minutes later I was having a late lunch with my son and his girlfriend at my home office in my kitchen when a different car pulled up with several guys in it. One man got out and walked aggressively onto my property and looked very mad so I got up and went out on my porch to see what was going [on] as I thought it may be someone that may have been in this home when I took a comp photo from the street. He said “were you expecting me” and he looked upset and angry. I said I do not know who you are and was not expecting anyone. He said he sold windows and wanted to talk with me and*

*come in my house. I told him I was not interested in getting new windows and I asked for his name and his card. He would not give me his name or business card. I explained today was not a good day as someone had been following me in SW Salt Lake County when I took several comp photos as I am a real estate appraiser and I asked if he was part of people following me today after I took a comp photo. He looked shocked and said no he was just here to sell windows. I told him I was talking with the police soon as I called them and someone was coming to talk with me at my home about someone following me. That was a bluff as I had not called the police at that point as I chalked it up to an owner not knowing appraisers take comp photos on recently purchased homes. I asked him again if he was part of the people following me. I asked him to please leave my property. He left quickly after that.*

*On Sunday night I thought I would look up on the Assessor website who currently owns this comparable and then I also looked on Facebook and it was one of the owners of this comp that came to my house which I guessed on Friday based on his behavior. I have written down details of what*

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*happened on Friday and put in a file in case he ever comes back to my home again in the future. To my knowledge he never has come back Saturday, Sunday, or today so I think the worst is over once he realized I was an appraiser taking comp photos. I do not think he will come back so I have moved on from this strange day last Friday.*

*I wanted to see if someone in your department could talk in the quarterly newsletter about ideas that local Utah appraisers can do to be safe when taking comp photos. I also spoke with several appraiser friends today that suggested maybe all Utah appraisers should have a magnetic panel that can be put on both front doors of a car or truck when taking comp photos to help put home owners at ease when someone may see an appraiser taking a comp photo from the street. I wanted to see if other states have a protocol in place to help protect appraisers so that they are safe when taking comp photos and to also let the public see a sign on a car that it is an appraiser taking the photos so they can feel more at ease. I am not sure if the state of Utah could make this a protocol so that all local appraisers get a magnetic sign that can easily be taken off easily and put on quickly when doing comp photos?*

*I have been appraising since 1986 and many times if kids are playing in the yard or people are in the yard I will not take a comp photo and try and come back later and or*

*use an MLS photo and explain I have driven [by] the comp but that people were in the yard. Other local appraisers do the same in these situations for their safety. I have had neighbors or owners sometimes yell over what are you doing and then I get out and give them my card and explain I am doing an appraisal and taking photos of recent sold properties. This is the first time I was followed that I know of, and also the first time a sold property owner came to my house and was acting very aggressive but saying he was a window sales person. I think once I told this man that someone was following me today when I was doing comp photos for an appraisal that I was working on, and when I asked if he was involved in what was going on and he said no, I think I calmed this situation down. Plus when he heard the police were coming to my house he left quickly.”*

This letter should be a reminder that we must always be aware of our surroundings and take measures to ensure our safety. While the suggestion of magnetic signs is a very good idea, it is not required by the Division of Real Estate. We would however like to offer some suggestions that may help.

1. Always be aware of your surroundings and, if possible, make sure there is an escape plan if needed.

2. If possible, go in pairs, numbers can be safer.
3. If people are in the area, let them know what you are doing. Understand the concerns of other people. After all, you are on their home turf and they are concerned for the safety of their family. A simple, friendly wave may go a long way.
4. You may consider returning at a later time to take your pictures.
5. Let someone know where you are going and contact them when you return to your office.
6. And as the appraiser that wrote this letter stated; when confronted by someone give them one of your business cards or simply tell them who you are and what you're doing.

- a. Note\*\*\* If you have attempted to take pictures and cannot complete this task with people in the area and you use an MLS photo; to protect yourself, take a picture of the neighbor's home as proof that you made an attempt to photograph the comparable. Then document in your work file.

I hope this may help someone in the future. Your safety should come first.



## ASSIGNMENT OF PURCHASE CONTRACTS

- Chris Martindale, Real Estate Investigator

Once again, the trend of "wholesaling" or "property flipping" is hitting Utah and other states. There are many versions of this practice, but it usually involves an unlicensed person or entity contracting to purchase real estate with the intent to assign or transfer that right to a third party before closing. The buyer obtains an Assignable Purchase Contract from the seller. This contract gives the buyer an option to purchase the property; and, within the contract, are provisions that allow the owner of the Assignable Purchase Contract to sell or "assign" the contract to a third party for a fee. This "assignment fee" is received by a person or entity holding that assignable contract. They then re-assign the contract to the third party at closing. This technique of buying and selling real estate is often taught at seminars and webinars. "How to" packages can be obtained through late night infomercials or online get-rich-through-real-estate type advertisements. These packages and techniques often leave one lingering question... Are they legal?

It depends..... In the State of Utah, it is illegal to sell real estate for valuable consideration unless you have a license, own the property, or fit into one of the exemptions listed in Section 61-2f-202 of the Utah code. There is a place and use for an Assignment of a Purchase Contract, the most appropriate of which is with an addendum to the Real Estate Purchase Contract. Unfortunately, the Division typically sees assignable contracts as a scheme used by unlicensed individuals to profit from the sale of real estate without a license and without owning the property. In fact, Section 61-2f-202 (1) (b) (iii) prohibits people from obtaining an interest in property for the purpose of evading licensure. When an individual obtains an Assignable Purchase Contract, it does NOT give them ownership of the property. The only thing they have is an interest in is an assignable contract, nothing more. Section 61-2f-202 (4) states ... "owner" does not include: (a) a person who holds an option to purchase real property. This means that the assignor of that contract may NOT market the property or advertise photos and

features. The only thing they can market is the contract itself.

This limitation also applies to someone who engages in assignable contracts and holds a real estate license. You too may not market the property without written authorization from the seller(s) and/or subagency if the property is listed with another brokerage. Please remember, you must also disclose that you are a licensed real estate agent.

Again, the Division usually sees assignable contracts with regard to unlicensed activity. Real estate agents, protect your clients, inform them of the pros and cons of accepting an assignable contract. Knowing the statutes and rules regarding licensing will help you avoid common pitfalls in transacting real estate deals for your clients as well as in your personal investment deals. It will also help you inform the public of common misconceptions regarding Assignable Purchase Contracts and techniques taught at the latest real estate seminar. Knowledge of statutes and rules will help you gain more business and maintain the integrity of our industry.

## Brokers Now Allowed To Supervise Multiple Office/Branch Locations



Legislation that regulates real estate licensees was recently changed. The change I am referring to in this article was previously presented in Director Stewart's lead article in the First Quarter 2017 Division Newsletter. This article intends to provide additional information and understanding on the significant regulatory relaxation of the Broker Supervision requirements of a Real Estate Brokerage Main Office and Branch Office locations. Until May 8th of this year, a Principal Broker could ONLY supervise the main office location of the Real Estate Brokerage (unless the Principal Broker was a DUAL Broker). Additionally, a unique Branch Broker was required to supervise every branch office location.

The recent legislative change now allows a Principal Broker (PB) to simultaneously supervise the Main Office Location of the brokerage and up to two additional branch office locations of the same brokerage. In addition, a Branch Broker (BB) of a real estate brokerage may simultaneously supervise up to a total of three branch office locations of the same brokerage.

This broker supervisory change allows greater flexibility regarding how a PB seeks to have the company supervised. Let's discuss some practical scenarios to help you better understand the level of supervisory flexibility that is now allowed:

**Broker #1 - Currently runs a real estate brokerage with three branch offices.** The company owner currently functions as the PB and has three BBs who each supervise one branch location.

With the recent change, a PB may now decide the best supervisory structure for the company. The PB must always supervise the main office location. Beyond that, the PB has multiple choices on how to supervise the three branch offices. The PB may now supervise one or two of the company's three branch locations in addition to supervising the main office. The PB would be required to have a minimum of one Branch Broker since there are greater than three company locations (including the main office location). The PB could have a BB supervise one branch location or any number up to three of the branch office locations. The real estate brokerage was previ-

ously required to have four supervising brokers (1 PB + 3 BBs = 4 Supervising Brokers). The regulatory change now allows this real estate brokerage to have as few as 2 Supervising Brokers (1 PB for one to three main office/branch locations, and 1 BB for one to three branch locations).

**Broker #2 - Currently runs a large real estate brokerage with eight branch locations.** The company owner currently functions as the PB and he has eight BBs who each supervise one branch location.

With this recent change, the PB may now decide the level of hands-on supervision that is desired for the real estate brokerage. The PB must continue to supervise the brokerage main office location, but the PB may now have as many as nine supervising brokers or as few as three supervising brokers (including himself or herself).

**Broker #3 - Currently runs a small single office real estate brokerage with no branch office locations.** The company owner must have a PB supervise the main office location. In this in-

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stance, the statutory change would have no effect on the supervisory structure for the company.

**Broker #4 – Currently runs a very large single office real estate brokerage with no branch office locations.** The company owner must have a PB supervise the main office location. In this instance, the statutory change would have no effect on the supervisory structure for the company.

There are many things to consider in making changes to the supervisory composition of your brokerage. Here are some things a PB would want to seriously consider:

- The number of licensees the PB is currently responsible to supervise
- The number of licensees the brokerage is likely to have *after* making supervisory changes allowed by the recent supervisory structural changes
- The years of experience and knowledge base of licensees affiliated with each office location
- The distance between company locations and the difficulty in supervising li-

censees remotely over a great distance

- The responsibility load that is required to adequately and competently supervise affiliated licensees under the current supervisory structure
- Balancing the positive and negative consequences of making significant supervisory responsibility changes to the brokerage
- Any increased legal exposure due to a potentially large number of licensees being supervised by fewer or even a single real estate broker
- Any increased legal exposure the brokerage is likely to incur as a result of making supervisory structural changes
- Any resulting changes in Errors and Omissions Insurance premiums from making supervisory structural changes
- Potential broker disciplinary consequences for failing to properly and adequately supervise affiliated licensees

**Remember that each company location (main office and branch**

**locations) and the Broker Supervisory Structure must be approved by the Division BEFORE any changes are put into operation.** Principal Brokers need to submit and receive advance Division approval BEFORE any Supervisory Structural changes are made. To request a change the PB needs to complete and sign a Real Estate Company/Multiple Branch Supervising Broker Registration Form **BEFORE any Supervisory Structural changes are made:**

<http://www.realestate.utah.gov/forms/Multiple%20Supervising%20Broker%20Registration%20Form.05.09.17with%20fillable%20box.pdf>.

Having greater supervisory structural options provide real estate brokers additional flexibility and responsibility. Consider wisely the decisions you make in deciding these significant choices and their resulting changes. The Division is here to assist you and to answer any questions you may have regarding any changes you may be considering.





## Kagie's Korner

### Buyers Gaining Access to Properties Prior to Recording

The Division currently has a number of complaints that involve buyers entering properties prior to recording to make upgrades, remodel, or to move in without the seller's permission. Listing agents have a fiduciary duty to their clients to help ensure that the property is in the same condition it was in at the time it went under contract (other than having contractually agreed to property inspection defects repaired by licensed contractors). Buyers' agents have a fiduciary duty to their clients to help ensure that buyers do not do anything to the property prior to recording, without written authorization from the seller. In a typical Real Estate Purchase Contract, the buyer and seller agree in section 12 to the following:

**12. CHANGES DURING TRANSACTION.** Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written

consent of Buyer: (a) no changes in any leases, rental or property management agreements shall be made; (b) no new lease, rental or property management agreements shall be entered into; **(c) no substantial alterations or improvements to the Property shall be made or undertaken (emphasis added);** (d) no further financial encumbrances to the Property shall be made, and (e) no changes in the legal title to the Property shall be made.

Often times, a buyer will request access to the property, prior to closing, in order to begin repairs, clean the property, or start improvements or alterations. If a buyer or agent enters a property and begins adjustments to the condition of the property and the transaction fails, the seller may have the burden of repairing the property and the buyer could

potentially face legal consequences.

Another possible concern is when a buyer is given permission to occupy the property before recording and without a written lease agreement between the buyer and seller. If the transaction fails and the buyer stops paying rent, the seller has the additional burden of evicting the buyer and/or risking potential damage to their property.

These are typical of the complaints the Division receives. In some of the complaints the buyer was given written authorization by the seller to access the property prior to recording. In other complaints the buyer was not given written authorization by the seller but the agent allowed access. In either case, allowing access or possession prior to closing may well be a fiduciary breach by a licensee and at minimum is risky for everyone involved in the transaction.

## SECOND QUARTER LICENSING and DISCIPLINARY ACTIONS

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

### **APPRAISAL**

ADAMS, LISLE G., certified residential appraiser, Monticello, Utah. In an order dated April 28, 2017, Mr. Adams's certification was renewed and placed on probation. On or about March 27, 2017, Mr. Adams surrendered to the Utah Division of Occupational and Professional Licensing his license to practice as a limited building inspector in the State of Utah. In a stipulation for the surrender of his inspector license, Mr. Adams admitted that on multiple occasions he had failed to inspect building projects as required as a part of his duties. Mr. Adams also granted building permits without checking if the individuals were properly licensed as contractors and allowed certain individuals to begin building projects before a required building permit was issued. In mitigation, Mr. Adams honestly disclosed the surrender of his inspector license in his application to renew his appraisal certification. Case number AP-17-91291

ANDERSON, CATHERINE, certified residential appraiser, Vernal, Utah. In a stipulated order dated May 24, 2017, Ms. Anderson admitted that she failed to complete an appraisal assignment as promised. After receiving a notice of

complaint from the Division, Ms. Anderson independently contacted her client and offered to refund the appraisal fee. Her client instead asked her to complete the appraisal. After more than a month, her client, who had still not received the appraisal, paid another appraiser to complete the appraisal. Sometime later, Ms. Anderson finally completed the appraisal of the property. In mitigation, Ms. Anderson acknowledged having ongoing medical and family issues at the time. Ms. Anderson agreed to pay a civil penalty of \$1,200 with \$600 reduced for restitution paid to her client and the remaining \$600 suspended so long as she violates no appraisal laws during the coming year. Ms. Anderson was also required to complete four hours of continuing education in addition to the continuing education required for her next certification renewal. Case number AP-2017-001

HOKANSON, JESSE N., certified residential appraiser, South Jordan, Utah. In a stipulated order dated November 23, 2016, Mr. Hokanson admitted to having prepared an appraisal report that contained errors in violation of USPAP Scope of Work and Standards Rules 1 and 2. Mr. Hokanson agreed to pay a civil penalty of \$3,000 and to complete seven hours of continuing education in

addition to the continuing education required for his next certification renewal. Case number AP-16-80577

### **MORTGAGE**

DEHESA, MICHAEL ANGELO, mortgage loan originator, Irvine, California. In an order dated March 16, 2017, Mr. Dehesa's license was granted and placed on probation for the initial licensing period due to criminal history. Case number MG-17-89296

JOHNSON, STEPHANIE AMPHON, mortgage loan originator, Clinton, Utah. In an order dated March 31, 2017, Ms. Johnson's license was granted and placed on probation for the initial licensing period due to criminal history. Case number MG-17-89566

MUNOZ, ANDRES, mortgage loan originator, Riverton, Utah. In an order dated April 7, 2017, Ms. Munoz's license was granted and placed on probation for the initial licensing period due to outstanding tax liens. Case number MG-17-89689

MUNSON, GARY, mortgage loan originator, Salt Lake City, Utah. In an order dated May 4, 2017, Mr. Munson's license was granted and placed on probation until Decem-

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ber 31, 2018, due to the revocation in 2003 of a professional license held by Mr. Munson in another industry. Case number MG-17-89746

RAMSEY-ACKERSON, KAE L LERAUN, mortgage loan originator, Sacramento, California. In an order dated March 31, 2017, Mr. Ramsey-Ackerson's license was granted and placed on probation for the initial licensing period due to criminal history. Case number MG-17-89567

SHEPPERD, ROBERT, mortgage loan originator, Lehi, Utah. In an order dated March 2, 2017, Mr. Shepperd's license was granted and placed on probation for the initial licensing period and the following renewal period due to criminal history. Case number MG-17-88580

## **REAL ESTATE**

AGUILAR, TIMOTHY D., sales agent, South Ogden, Utah. In an order dated November 15, 2016, Mr. Aguilar's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-87087

BALLARD, LUCAS J., sales agent, American Fork, Utah. In a stipulated order dated April 12, 2017, Mr. Ballard admitted to having created electronic documents and signed and initialed them for his client without a written buyer agency agreement or a written power of

attorney. In mitigation, his client was older, not technically savvy, and had verbally approved electronic signatures on his behalf. Mr. Ballard agreed to pay a civil penalty of \$2,000 and to complete six hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-14-73694

BEEBE, KURT M., sales agent, Coalville, Utah. In an order dated April 17, 2017, Mr. Beebe's license was granted and placed on probation for one year due to a plea in abeyance in a criminal matter. Case number RE-17-89885

BIRD, SCOTT, branch broker, Cedar City, Utah. On May 4, 2017, the Division issued a citation to Mr. Bird for failing to display his brokerage information on his social media page but advertising his marketing team instead. The citation assessed a fine in the amount of \$150. Citation # DREC-17-16

BODELL, L. TANEN, sales agent, Saratoga Springs, Utah. In an order dated May 12, 2017, Mr. Bodell's license was granted and placed on probation for the initial licensing period due to a plea in abeyance in a criminal matter. Case number RE-17-91536

BONTADELLI, RICHARD D., associate broker, Cedar City, Utah. On April 17, 2017, the Division issued a citation to Mr. Bontadelli for failing to display his brokerage information on his social media page but advertising his marketing team instead. The citation assessed a fine in the

amount of \$150. Citation # DREC-17-11

BOUD, REBECCA, sales agent, Riverton, Utah. In an order dated March 28, 2017, Ms. Boud's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-17-89493

BRADSHAW, RODNEY S., sales agent, Park City, Utah. In an order dated April 25, 2017, Mr. Bradshaw'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-17-91217

BRAITHWAITE, JAY MICHAEL, sales agent, Kaysville, Utah. In an order dated April 6, 2017, Mr. Braithwaite's license was granted and placed on probation for the initial licensing period due to his criminal history. Case number RE-17-89642

BROWN, ROBERT J., principal broker, Hyrum, Utah. In a stipulated order dated March 15, 2017, Mr. Brown admitted to signing the experience log for an agent affiliated with him for real estate experience from the management of properties owned by the agent and for which the brokerage did not maintain the transaction files. In mitigation, Mr. Brown indicates that he did verify the experience was completed and that he had reviewed the agent's files. Mr. Brown agreed to pay a civil penalty of \$500. Case number RE-15-77782

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BURNS, BROCK W., sales agent, Highland, Utah. In an order dated March 8, 2017, Mr. Burns's license was denied due to a civil judgment involving real property in which the court entered findings of fraud and abusive lien damages. Case number RE-17-88750

BUTTARS, CHAD, sales agent, Ogden, Utah. In a stipulated order dated May 10, 2017, Mr. Buttars admitted to having entered into a listing agreement to represent his clients in the sale of their property. Later, Mr. Buttars discussed leasing the property from his clients until the property sold or was foreclosed. Mr. Buttars then withdrew the property from the MLS without his clients' authorization, sub-leased the property to an acquaintance, and failed to properly account for rental payments, deposits, repairs, and utility payments. Mr. Buttars admitted that his actions are in violation of Utah law and administrative rules. He agreed to pay a civil penalty of \$7,000 and to complete 12 hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-12-62461

CAKLER, DALLAS JARED, sales agent, Ogden, Utah. In an order dated March 31, 2017, Mr. Cackler's license was renewed and placed on probation for the renewal period due to a plea in abeyance in a criminal matter. Case number RE-17-89589

CANNON, JAMES W., sales agent, Provo, Utah. On March 20, 2017, the Division issued a citation

to Mr. Cannon for failing to display his brokerage information on his social media page and advertising his marketing team instead. The citation assessed a fine in the amount of \$150. Citation # DREC-17-6

COLE-NIEVES, JULIAN DANIEL, sales agent, Draper, Utah. In an order dated April 17, 2017, Mr. Cole-Nieves's license was granted and placed on probation for one year due to criminal history. Case number RE-17-89877

CRITCHFIELD, NICHOLAS ISAAC, sales agent, Salt Lake City, Utah. In an order dated April 17, 2017, Mr. Critchfield's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-89878

DAVIS, HILARY, sales agent, Provo, Utah. In a stipulated order dated April 12, 2017, Ms. Davis admitted to having continued providing property management services for several years despite the expiration of her sales agent license. Ms. Davis's license was later reinstated but she continued to provide the property management services representing the owner of a property even though the property was not represented by the brokerage with which she was then affiliated. Ms. Davis agreed to pay a civil penalty of \$5,000 and to complete seven hours of continuing education in addition to the continuing education required for her next license renewal. Case number RE-12-60550

DELUCAS, CAROLYN, sales agent, Salt Lake City, Utah. In an order dated May 12, 2017, Ms. DeLucas's license was granted and immediately suspended until June 12, 2017, and will then be placed on probation for the remainder of the initial licensing period due to her failure to disclose prior criminal history in her application for licensure. Case number RE-17-91182

EASTMAN, CHARLETTE, associate broker, Highland, Utah. In a stipulated order dated March 15, 2017, Ms. Eastman admitted to having failed to return an earnest money deposit despite repeated requests from a prospective buyer. It was not until a judgment was entered against Ms. Eastman in favor of the prospective buyer that the deposit was returned. During the interim, Ms. Eastman's trust account balance fell below the amount of the earnest money deposit on several occasions in violation of Utah law/administrative rules. In another matter, Ms. Eastman acted as a limited agent for a client. Part of the earnest money received from the client was deposited in Ms. Eastman's operating account rather than in her trust account and that portion was not returned to the client when the transaction failed. On multiple occasions, Ms. Eastman improperly comingled personal and business funds with client funds in her trust account and paid personal and business expenses from the trust account. For these multiple violations, Ms. Eastman agreed to the revocation of her license, to pay a civil penalty of \$25,000 and to not

*continued from page 12*

have signatory authority for any bank account associated with the brokerage of which she is part owner. Case numbers RE-10 48502 and RE-10-49165

ELGGREN, JONATHAN, sales agent, Sandy, Utah. In an order dated March 31, 2017, Mr. Elg-gren's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17 89571

ERCANBRACK, LYNDESEY JO, sales agent, Highland, Utah. On March 21, 2017, the Division issued a citation to Ms. Ercanbrack for failing to display her brokerage information on her social media page and advertising her marketing team instead. The citation assessed a fine in the amount of \$150. Citation # DREC-17-8

EVANS, WILLIAM, sales agent, West Jordan, Utah. In an order dated April 17, 2017, Mr. Evans's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-89109

FACER, JULI L., associate broker, Layton, Utah. In a stipulated order dated April 12, 2017, Ms. Facer admitted to that she had purchased property from her clients who were sellers in a short sale transaction and removed the property from the home. A dispute over the property arose between the buyer and sellers. Ms. Facer admitted that her actions subjected her client to potential breach of

contract allegations and were not consistent with the fiduciary duty she owed to her client. Ms. Facer agreed to pay a civil penalty of \$1,000. Case number RE-16 84731

FUIT, MICHAEL TROY, sales agent, Roy, Utah. In an order dated March 23, 2017, Mr. Fuit's license was denied due to criminal history. Case number RE-17 87902

GARCIA, JR., ANGEL L., sales agent, Hooper, Utah. In an order dated April 5, 2017, Mr. Garcia's license was renewed and placed on probation for the pendency of a criminal matter. Case number RE-17-89656

GIVENS, SARAH STEPHANIE, sales agent, Taylorsville, Utah. In an order dated November 16, 2016, Ms. Givens's license was granted and placed on probation for one year due to a plea in abeyance in a criminal matter. Case number RE-16-87086

GORDON, JOSEPH, sales agent, South Jordan, Utah. On April 24, 2017, the Division issued a citation to Mr. Gordon for failing to display his brokerage information on his social media page and advertising his marketing group instead. The citation assessed a fine in the amount of \$150. Citation # DREC-17-12

GRAHAM, JAMES D., sales agent, Herriman, Utah. In a stipulated order dated November 16, 2016, Mr. Graham entered into an

exclusive brokerage agreement to list property of the sellers. The agreement contained errors and failed to identify the property. Mr. Graham, acting as a limited agent, submitted an offer on behalf of a prospective buyer to purchase the property and the parties negotiated a purchase price, subject to third-party approval. Sometime after entering into the brokerage agreement and on the same day that the offer was presented, Mr. Graham listed the property through the MLS. The MLS listing indicated that the property was not available to tour and specified "no showings." Several months later the mortgage lender refused the prospective buyer's purchase price. Despite a request from his clients, Mr. Graham failed to update the listing to indicate that the property was available to show and presented, as a limited agent, another offer to sellers that was less than the lender's minimum purchase price. After multiple requests from the sellers to change the listing status of the property from "active" to "withdrawn," Mr. Graham changed the MLS status to "off market" which precluded sellers from actively marketing the property through another agent. Mr. Graham admits that his actions are in violation of Utah law and administrative rules. Mr. Graham agreed to pay a civil penalty of \$1,500 and to take nine hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-13-66586

HATCH, JOSHUA, MICHAEL, sales agent, Orem, Utah. In an order dated March 27, 2017, Mr.

*continued on page 14*

*continued from page 13*

Hatch's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17 89466

HENDRICKS, JENNIFER, principal broker, Cedar City, Utah. On May 4, 2017, the Division issued a citation to Ms. Hendricks for failing to display her brokerage information on her social media page but advertising her marketing team instead. The citation assessed a fine in the amount of \$150. Citation # DREC-17-17

HORAN, JACOB MICHAEL, sales agent, Lehi, Utah. In an order dated May 16, 2017, Mr. Horan's license was reinstated and placed on probation for one year due to a plea in abeyance agreement in a criminal matter. Case number RE-17-91610

HUNSAKER, COLLEEN, sales agent, Syracuse, Utah. In a stipulated order dated April 12, 2017, Ms. Hunsaker admitted that although she believed that the buyers and sellers executed a limited brokerage agreement, no such agreement was found in her files and although an agency disclosure was signed by the sellers, it did not contain the necessary detail to constitute informed consent to a transaction in which the brokerage represented both principals. The transaction was a lease agreement with option to purchase. The investigation of this matter did not result in any evidence that Ms. Hunsaker failed to remain neutral throughout a dis-

pute over the option money, however, she failed to produce a written agency agreement necessary to obtain informed consent from the buyers to the limited agency. Ms. Hunsaker agreed to pay a civil penalty of \$500 and to complete three hours of continuing education in addition to the continuing education required for her next license renewal. Case number RE-14-72669

JEPPESEN, MICHAEL, A., principal broker, Salt Lake City, Utah. In a stipulated order dated March 15, 2017, Mr. Jeppesen admitted to having filed a notice of lien to secure the rights of his brokerage without filing a petition or having a judgment entered in favor of the brokerage. Mr. Jeppesen's actions are in violation of Utah law and administrative rules. Mr. Jeppesen 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-13-67776

JONES, MATHEW, sales agent, Washington, Utah. In an order dated April 10, 2017, Mr. Jones's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-89713

KERSWELL, CLARK T., sales agent, Orem, Utah. In an order dated May 12, 2017, Mr. Kerswell's license was granted and placed on probation for the initial licensing period due to criminal

history. Case number RE-17 991538

KING, TANA, sales agent, West Valley City, Utah. In an order dated May 12, 2017, Ms. King's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-89950

LARSEN, ALAN COLE, sales agent, West Jordan, Utah. In an order dated May 12, 2017, Mr. Larsen's license was granted and placed on probation for one year due to a plea in abeyance agreement in a criminal matter. Case number RE-17-91537

LOPEZ, MAYRA, sales agent, Lehi, Utah. In a stipulated order dated November 16, 2016, Ms. Lopez admitted to having entered into a listing agreement to market a home for sale or lease. The owner established a minimum monthly lease price. Ms. Lopez marketed the property for less than the amount specified by the owner. She admits that her actions are in violation of her fiduciary duty of obedience to her client. Ms. Lopez agreed to pay a civil penalty of \$750 and to complete two hours of continuing education in addition to the continuing education required for her next license renewal. Case number RE-14-72619

MANSFIELD, ADAM RULON, sales agent, Salt Lake City, Utah. In an order dated April 17, 2017, Mr. Mansfield's license was granted and placed on probation for the initial licensing period due to a

*continued from page 14*

pending criminal matter. Case number RE-17-89886

MARCHANT, KENT, principal broker, Layton, Utah. In a stipulated order dated May 10, 2017, Mr. Marchant admitted to having made a substantial misrepresentation in that he failed to disclose criminal history in his application for licensure. Mr. Marchant agreed to pay a civil penalty of \$500. His license was granted on probation for the initial licensing period. Case number RE-17-91406

MCARDLE, CHANDLER SCOTT, sales agent, Farmington, Utah. In an order dated April 5, 2017, Mr. McArdle's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-89649

MORLEY, RANAE, sales agent, Salt Lake City, Utah. In an order dated May 16, 2017, Ms. Morley's license was reinstated and placed on probation for one year due to a plea in abeyance agreement in a criminal matter. Case number RE-17-91605

OLSON, BRANDON, sales agent, Salt Lake City, Utah. In an order dated November 15, 2016, Mr. Olson's license was granted and placed on probation for one year due to criminal history. Case number RE-17-87083

PACARO, SARAH, sales agent, Murray, Utah. In an order dated May 15, 2017, Ms. Pacaro's license was granted and placed on

probation for the initial licensing period due to criminal history. Case number RE-17-91574

POLASEK, JERRY, principal broker, Salt Lake City, Utah. In an order dated April 13, 2017, Mr. Polasek's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-17-89829

POULSON, KIMBALL D. , sales agent, Draper, Utah. In an order dated March 27, 2017, Mr. Poulson's license was renewed and placed on probation until he has paid, settled, or had the judgment discharged, relative to a civil judgment on his personal guaranty of a promissory note secured by real property. Case number RE-17-89463

RADDON, RACE WILLIAM, sales agent, Sandy, Utah. In an order dated May 15, 2017, Mr. Raddon's license was granted and placed on probation for the initial licensing period due to a plea in abeyance agreement in a criminal matter. Case number RE-17-91575

REX, JAMES, sales agent, Orem, Utah. On March 1, 2017, the Division issued a citation to Mr. Rex for failing to display his brokerage information on his social media page but advertising his marketing team instead. The citation assessed a fine in the amount of \$150. Citation # DREC-17-4

RIDD, NICHOLAS JAMES, sales agent, Salt Lake City, Utah. In an order dated November 16, 2016, Mr. Ridd's license was granted and

placed on probation for the initial licensing period due to criminal history. Case number RE-16-86989

SHEPHERD, ESTHER LYNN, sales agent Spanish Fork, Utah. In an order dated May 5, 2017, Ms. Shepherd's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-17-91414

STUCKI, RENAE, sales agent, St. George, Utah. On March 21, 2017, the Division issued a citation to Ms. Stucki for failing to display her brokerage information on her social media page but advertising her marketing team instead. The Division had previously warned Ms. Stucki about this advertising violation. The citation assessed a fine in the amount of \$500. Citation # DREC-17-5

TAYLOR, LINCOLN, sales agent, Woods Cross, Utah. In a stipulated order dated May 10, 2017, Mr. Taylor admitted that he agreed verbally to reduce the commission due from a seller if the seller would use his services in the purchase of their new home. The seller used a different agent to assist in the purchase of a new home. Mr. Taylor communicated with the seller, informing him that he was obligated to pay him the amount of the reduced commission from the sale of his home. The seller paid Mr. Taylor who deposited the funds in his personal account. A few weeks later, Mr. Taylor issued a check in the same amount to the brokerage with which he was affiliated. A few months later the brokerage re-

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turned the funds to the seller. Mr. Taylor admits that his actions in this matter were in violation of Utah law and administrative rules. He 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-15-78596

TAYLOR, RYAN LEE, sales agent, Ogden, Utah. In an order dated March 31, 2017, Mr. Taylor's license was granted and placed on probation for one year due to criminal history. Case number RE-17-89574

TELAROLI, DALLIN, sales agent, Saratoga Springs, Utah. In an order dated November 17, 2016, Mr. Telaroli's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-87157

TERRY, ALICIA J. , sales agent, Highland, Utah. In a stipulated order dated November 16, 2016, Ms. Terry admitted to having posted an advertisement for the sale of a home. The property had sold the previous week. At the time of the advertisement, Ms. Terry did not have the owner's permission to advertise the property for sale. In addition, the advertisement failed to disclose the full name of the brokerage but referred to a team name. Ms. Terry admits that her actions were in violation of Utah law and administrative rules. She agreed to pay a civil penalty of \$500 and to complete three hours

of continuing education in addition to the continuing education required for her next license renewal. Case number RE-14-72257

TURNER, EARL FREDRICK, sales agent, Lindon, Utah. In an order dated April 18, 2017, Mr. Turner's license was granted and placed on probation for the initial licensing period due to a judgment for unpaid child support. Case number RE-17-89920

TURNER, BLAINE V. , principal broker, Payson, Utah. In a stipulated order dated April 12, 2017, Mr. Turner admitted to having acted as a limited agent and as a principal in several transactions. Although the buyers and sellers were represented by other agents of his brokerage firm and Mr. Turner did not personally represent any buyers or sellers in the transaction, he acted as principal broker and thus as a limited agent, in violation of Utah law/administrative rules. Mr. Turner 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-12-59877

WALKER, ALENA KELSEY, sales agent, West Valley City, Utah. In an order dated April 17, 2017, Ms. Walker's license was granted and placed on probation for one year due to criminal history. Case number RE-17-89884

WILLIAMS, BRIAN C. , sales agent, South Jordan, Utah. In a stipulated order dated November

16, 2016, Mr. Williams admitted to having listed a property for sale on the MLS several months prior to entering into a written Exclusive Right to Sell Listing Agreement with the owner, in violation of Utah law and administrative rules. Mr. Williams 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-14-70361

WILLIAMS, DONN S. , sales agent, Washington, Utah. In an order dated April 4, 2017, Mr. Williams's license was renewed and placed on probation for the pendency of a criminal matter. Case number RE-17-89626

WILLS, ADAM, associate broker, Clearfield, Utah. On February 9, 2017, the Division issued a citation to Mr. Wills for several advertising violations. The citation assessed a fine in the amount of \$1,000. Citation # DREC-17-3

WILSON, ALLISON, sales agent, Ogden, Utah. In an order dated November 18, 2016, Ms. Wilson's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-16-87167

## **TIMESHARE**

TRAN, DILLON MARSHALL, timeshare salesperson, Draper, Utah. In an order dated February 14, 2017, Mr. Tran's license was denied due to criminal history. Case number TS-17-88675



## **RULE DEVELOPMENTS**

Since April 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 Company Rules**

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 proposed changes were filed and the public comment period on the proposed changes ended May 31, 2017. The Appraiser Board and the Division are currently considering industry concerns about the proposed amendment and changes and whether to make additional changes to the proposed rule

amendment. The following is a summary of the proposed rule amendment, including the changes:

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 appraiser 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 apprais-

ers by broadcasting a simultaneous electronic communication.

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 Rules**

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

### **Mortgage Rules**

A proposed rule amendment is under consideration for the residential mortgage rules. Utah adopted the Uniform State Test (the "UST") by statutory amendment earlier this year and a proposed rule amendment has been filed to make the administrative rules consistent with state law with regard to the UST. The proposed rule amendment would also:

a. clarify the timing, reorder the procedures, and revise the requirements for applying for a lending manager license;

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b. clarify the deadlines associated with application for licensure; and

c. add a requirement for a division approved continuing education course for mortgage loan originators newly licensed in Utah (to replace the Utah specific test no longer required due to the adoption of the UST).

The proposed rule amendment was filed May 11, 2017. The public comment period on this proposed rule amendment runs through July 3, 2017.

## **Real Estate Rules**

A proposed rule amendment was filed March 7, 2017, and became effective May 10, 2017. The amendment added subsection R162-2f-202d and amended subsection R162-2f-207 of the administrative rules.

Subsection 202d allows an associate broker or a sales agent (“licensee”) affiliated with a dual broker through a property management company to simultaneously provide both property management services and real estate sales services when the licensee has been designated as a property management sales agent by the dual broker with whom the licensee is affiliated. The designation requires the licensee to pay a designation fee to the Division. A designated licensee may simultaneously

provide both types of services but only through the property management company and the real estate sales brokerage overseen by the dual broker. Subsection 207 was amended to allow a principal broker to notify an associate broker or sales agent (“licensee”) who is unavailable to sign or electronically affirm a change form that the broker has terminated the broker’s affiliation with the licensee by sending the licensee an email through the Real Estate Licensing and Management System (RELMS). When notifying the licensee by an email through RELMS, the termination of affiliation does not take effect until 10 days after the date that the email was sent.

## **Timeshare and Camp Resort**

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



## **Utah! Division of Real Estate**

### NEWS

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Contributor/Layout...Jennica Gruver  
Contributor.....Kadee Wright  
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## 2017 CARAVAN



Once again, the annual CARAVAN traveled to nine locations across the state. As always, there was an excellent exchange of information and feedback between licensees and Division staff regarding regulation of the real estate industry in Utah.

Director Jonathan Stewart's presentation focused on new legislation that recently went into effect. In the Division's First Quarter newsletter, Director Stewart outlined the changes that were passed in the 2017 legislative session. This article can be located here:

[http://www.realestate.utah.gov/newsletters/newsletter\\_q1-2017.pdf](http://www.realestate.utah.gov/newsletters/newsletter_q1-2017.pdf)

In addition to Director Stewart's presentation, Mark Fagergren the Licensing & Education Director, and Kadee Wright the Chief Inves-

tigator, shared presentations with attendees.

Mark explained how the mortgage industry's adoption of the Uniform State Test (UST) might lead to out of state mortgage loan companies and mortgage loan originators (MLOs) having an increased interest in becoming licensed in Utah. He will report the change in mortgage licensing numbers next year when we can see what impact the UST has had on the licensing numbers of MLOs in Utah coming from other states.

Mark also shared how the Lending Manager application process is changing allowing for Lending Manager candidates to take the 40-hour Lending Manager pre licensing course *without* prior written approval from the Division.

Mark shared information about a downward trend in the number of Licensed Appraisers and Registered Trainees across the country and in Utah. This downward trend in the number of appraisers is particularly troubling given the increasing average age of appraisers. Fewer individuals are electing to enter the residential appraisal profession while those already in the profession are aging. These

concerns are already being felt in some rural and remote areas of Utah. Clearly the alarm warning has been sounded for the potential future of the residential appraisal profession and how this might also have a negative impact on the real estate and mortgage industries.

In response to the declining trend in the number of Licensed and Certified Appraisers, the Appraisal Qualifications Board has submitted their Third Exposure Draft outlining significant proposed changes in the college education and experience requirements for becoming a Licensed or Certified Appraiser. The Third Exposure Draft proposes to trim the college education requirements for both Licensed and Certified Residential Appraisers. In addition, experience requirements for all three levels of appraiser would be reduced by 1,000 hours each.

New Practical Applications of Real Estate Appraisal (PAREA) courses are proposed in this Third Exposure Draft. A combination of these three 150 hour courses could be completed in lieu of traditional work experience to become Licensed or Certified Residential Appraisers, under provisions of



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the most recent Appraisal Qualifications Board Third Exposure Draft. Two of the three proposed courses, plus 500 hours of traditional non-residential work experience would satisfy the experience requirement to become a Certified General Appraiser.

These recommended changes are a strong effort by national appraiser regulators to stimulate greater interest in pursuing a career as an appraiser. If these new proposals receive final approval, it will be interesting to see what impact these reduced licensing requirements will have in encouraging entrance into the appraisal profession, while maintaining consumer confidence.

Mark discussed the increasing licensing numbers of Utah real estate licensees. Including inactive licensees (3,922), there are now nearly 22,000 total real estate licensees in our state. We are slowly advancing towards the high point of real estate licensing num-

bers for real estate licensees of 24,757 back in 2007.

Mark recited some problems seen in the license application process of real estate broker candidates. Some unfortunately common application setbacks include the following:

- **Applicants submitting, and Principal Brokers signing broker candidate experience logs for transactions that were not run through the real estate brokerage in which the candidate was affiliated.**
- **Candidates submitting, and Principal Brokers signing experience logs with exempt licensing real estate experience, that was not run through the real estate brokerage** (i.e. personal transactions or work performed for their non-broker employer).
- Applicants seeking and Principal Brokers signing experience logs seeking experience point credit for transactions that **did not include the candidate's name on agency agreements and purchase and/or lease contracts.**
- Candidates experience point credit improperly calculated **for work performed by a team**

(remember **experience points are divided proportionally among the licensees identified in the agency agreements and purchase and/or lease contracts**).

Principal and Branch Brokers, please remember to check your monthly broker notification email from the Division to ensure that licensees that *think* they are affiliated with your brokerage, actually are. And to ensure that licensees that you *think* have been disassociated from your brokerage, actually have been.

Mark then had attendees participate in some Real Estate Jeopardy questions.

Kadee Wright the Division Chief Investigator, started out her enforcement presentation discussing the complaint process and the steps taken during an investigation and suggested recommendations.

Ms. Wright then discussed the statistics of complaints received, opened and closed for the previous six months. Kadee went on to discuss hot topics in all three industries. She covered Mortgage Referral Agreements or Marketing Service Agreements and CFPB consequences. She discussed Loan Modifications and the requirement of holding a current mortgage license. Kadee examined hard Money Lending and the likelihood that this work requires a license if engaged in the the Hard

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Money Lending Business (even for one client).

Regarding the Real Estate industry, the topics she discussed were:

1. Liens for Commissions can only be filed by a Principal Broker.
2. Holding Principal Brokers more accountable for the actions of their affiliated licensees.
3. Problems observed regarding assignable Real Estate Contracts
4. Injecting Yourself in the Transaction

Kadee continued by discussing the following topics regarding the appraisal industry:

1. Fannie Mae new guidelines
2. HUD Complaints
3. Appraiser Biases

Kadee ended her presentation by discussing various enforcement cases that involved all three of the industries that the Division regulates.



## STAFF SPOTLIGHT

**Teresa Larsen**  
*Real Estate Investigator*

Say hello to Teresa! She joined the Division in the fall of 2016 as a member of our Real Estate investigative team. Teresa, who graduated from Utah State, is originally from Portland, Oregon but has lived in the Salt Lake area for the majority of her life. She's been married 31 years to her high school sweetheart and has 2 daughters who have both attended the U (a big "Go Utes!" from Teresa). Teresa tells us that in her spare time she vacuums dog hair and cleans patio doors thanks to her 3 furry rescued children – Mia, Gracie Belle and Lexie Lou.



Teresa initially obtained her real estate license in 1991 while working at Coldwell Banker Premier in Sugarhouse as an assistant to one of the industry's top agents at the time. She upgraded to a Broker's license in 1994, opened her own brokerage and has held her Principal Broker's license ever since! While maintaining her PB license over the past 23 years, she's also been an Appraiser, a Franchise Consultant for RE/MAX International, and a Right-of-Way Land Acquisition Agent for UTA where she negotiated land purchases for the TRAX and FrontRunner rail lines. Then last October she landed here at the Division! Among all the other friendly Division faces, she met Van Kagie for the first time after having called him many times (unbeknownst to him) over the years with her pressing broker questions.

Some words from Teresa herself:

"The best part about my job here at the Division is honestly the people I work with every day (as corny as that sounds!) This is a great, cohesive group of respectful people. Prior to working here, and as we often here from agents, I did not have a very good feel for just how dedicated the Division actually is to our industry. Even at the PB level, the depth of knowledge and hard work performed by the Division is elusive, and probably under-rated, as the "machine behind the scenes" strives to improve our industry on many levels, day in and day out. Being on this side of our profession now is an enlightening, rewarding and reassuring, experience."





# Division of Real Estate

## Property Management Sales Agent

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For several years we have had conversations with the property management industry about a sales agent working for the property management (“PM”) company under a Dual Broker. To help you understand the issue, a Dual Broker is the only real estate broker with the ability to simultaneously supervise or manage two separate companies with two different names. A Dual Broker can supervise a real estate sales brokerage which has the ability to perform both sales and PM transactions, but they can also manage a PM company. The issue arises with the PM company under a Dual Broker. The PM company can only perform PM transactions, thus restricting any sales agent or associate broker from performing any real estate listing or sales activities while affiliated with this company.

Everyone who holds a real estate sales agent or associate broker license has completed education and taken a test that authorizes them to perform both PM and sales. If one of them decides to affiliate with the PM company under a Dual Broker,

they are restricted to only performing PM.

The Division met with the PM industry to brainstorm ideas that would allow a sales agent affiliated with the PM company of a Dual Broker to be allowed to perform sales transactions. The idea that made the most sense and which has been approved both in statute by the Legislature and Administrative Rules by the Real Estate Commission was a Property Management Sales Agent Designation (PMSA). This designation has been available since May 9th. This designation allows a sales agent or associate broker affiliated with a PM company under a Dual Broker to perform sales transactions under the sales company of the same Dual Broker. This designation does not allow someone to work for two different brokers.

This designation is only available to a sales agent or associate broker who is affiliated with a PM company under a Dual Broker. If a sales agent or associate broker is interested in obtaining this designation, they would need to fill

out an application that can be found here:

[http://www.realestate.utah.gov/realestate/re\\_property\\_management\\_sales\\_agent.pdf](http://www.realestate.utah.gov/realestate/re_property_management_sales_agent.pdf).

The sales agent or associate broker must have their broker sign the application, and the application must be turned into the Division with a \$50.00 application fee.

At any time in the future, if the sales agent or associate broker decides they do not want to work for the PM company of a Dual Broker, the designation will be removed and they will have to reapply in the future if they decide they want the designation again. There is no renewal fee for the designation and it will stay with a licensee for as long as they are affiliated with the PM company of a Dual Broker.

The Division believes that with the introduction of the PMSA designation, licensees affiliated with a PM brokerage are now able to provide the same level of brokerage services that any other licensee can perform.

## NEW MLO POST LICENSING COURSE

The Utah Residential Mortgage Regulatory Commission (Commission) recently approved a 5-hour post license education course for all Mortgage Loan Originators (MLOs) who receive an original Utah mortgage loan originator's license after May 8, 2017.

The recent statutory change which substituted the Uniform State Test (UST) for the previous Utah State MLO Exam, increases the likelihood that individuals licensed in other states which have adopted the UST, will now have an increased interest in becoming licensed as an MLO in Utah.

The Commission determined that since the Utah MLO exam has now been eliminated, there was a persuasive need for a CE Course to instruct new Utah MLO licensees regarding the Statutes and Administrative Rules that were previously encompassed by the Utah exam.

**The Commission recently approved the content outline for the 5-hour Post Licensing Course to be taught to new Utah mortgage licensees. This post license education course is required to be completed by all newly licensed Utah MLOs who receive their original Utah MLO license, on or after May 8, 2017. The course can be taken any time after it becomes available (July of 2017). The time table deadline for completion of the required post license education course is the end of year following the year in which the MLO is initially licensed in Utah. For**

**example, a mortgage licensee who has been licensed for 12 years in Texas (or any other state), receives their original Utah MLO license in August of 2017. This individual will need to complete the 5-hour Post Licensing Course no later than December 31, 2018.**

The 5-hour post license course covers Utah specific legislative and Administrative Rule requirements pertaining to the following topics:

- Non-Disclosure Sales
- Property Ownership
- Property Tax Collection
  - Due November 31<sup>st</sup> in arrears
  - Primary and Secondary Rates
- Mortgage Products – Including State Specific
- Who Signs? – The Authority to Sign Documents
- Marketing and Advertising Requirements
  - Trigger Terms
  - Joint Marketing – Lender/Real Estate Licensee – Open Houses
  - Social Media
  - MSA – Current MSA Guidelines and Rule Changes
  - Lead Generation and Purchasing Leads
- Review of The Utah Division of Real Estate
  - Regulatory Authority
  - Department/Agency Structure

- Responsibilities and Limitations
- Regulatory Authority and Responsibilities of The Utah Residential Mortgage Practices and Licensing Act
- The Utah High Cost Home Loan Act
- Mortgage Administrative Rules and Rule Changes that Occurred in the Previous Two Years
- Utah License Law and Regulation
  - Activities Requiring a License
  - Unlicensed Activity
  - MLO Compensation and Personal Liability
- Mortgage License Maintenance
  - Continuing Education Requirements
  - Personal Information Updates and Required Notifications
  - Renewal
  - Record Keeping and Reporting
  - License Suspension, Reinstatement, or Rescission of License
  - Fines and Penalties
  - Civil and Criminal Liability

The introduction of the post licensing course by the Mortgage Commission should ensure that Utah consumers will continue to be protected by having all mortgage loan originators educated on Utah lending industry regulatory requirements and obligations.