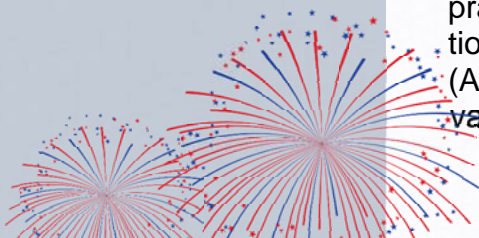


Second Quarter 2018

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Director's Message

Square Footage, Gross Living Area (GLA), and Finished Basements

This year in several locations on CARAVAN we had discussions about measuring residential home square footage, and specifically whether a basement square footage should be included in the Gross Living Area (GLA) calculation. There were some differences of opinion among appraisers and real estate agents/brokers about the value of basement square footage and whether it should count towards GLA. When an appraiser appraises a residential property, there are different guidelines they could be required to follow, depending on the financing and type of property. Ultimately the appraiser and lender should determine what standards should be followed when appraising a property for lending purposes. According to Thomas Hardwick, a Certified General Appraiser from Michigan,



Jonathan Stewart

lines define Gross Living Area, [and] Basement/Below Grade Floor Area... [T]he appraiser and the lender should determine the level of detail necessary in calculating the home's square footage.

[t]here are generally recognized guidelines (including the Fannie Mae Selling Guide, FHA/HUD Handbook 4150.2, Employee Relocation Council (ERC) Appraisal Guide, American National Standards Institute (ANSI) Z765-2003, etc.). To varying degrees, these guide-

The main message I've received from appraisers is that these guidelines are used to create consistency in valuing properties. For example, if you had two properties in the same neighborhood, exactly the same square footage, and exactly the same quality, but one property had 3,000 square

continued from page 1

feet on the main level and the other property had 1,500 square feet on the main level and 1,500 square feet in the basement, which property should have a higher valuation? Most, if not all, would say that the property that is 100% above-grade would have a higher valuation. In most cases appraisers compare and adjust for differences in basement size separately from differences in above-grade GLA. In addition, these appraisers have said that they do not include basement square footage in GLA for the reasons I have mentioned above, mainly for consistency when comparing one property to another.

To understand this better, here are guidelines from Fannie Mae and FHA/HUD that appraisers may be required to follow when appraising a property:

Gross Living Area

Fannie Mae Selling Guide, May 1, 2018

B4-1.3-05, Improvements Section of the Appraisal Report

The most common comparison for one-unit properties, including units in PUD, condo, or co-op projects, is above-grade gross living area. The appraiser must be consistent when he or she calculates and reports the finished above-grade room count and the square feet of gross living area that is above-grade.

When calculating gross living area

- The appraiser should use the exterior building dimensions per floor to calculate the above-grade gross living area of a property.
- For units in condo or co-op projects, the appraiser should use interior perimeter unit dimensions to calculate the gross living area.
- Garages and basements, including those that are partially above-grade, must not be included in the above-grade room count.

Only finished above-grade areas can be used in calculating and reporting of above-grade room count and square footage for the gross living area.

<https://www.fanniemae.com/con tent/guide/sel050118.pdf>

FHA/HUD Guidelines

4150.2 Property Analysis

Gross Living Area is the total area of finished, above-grade residential space. It is calculated by measuring the outside perimeter of the structure and includes only finished, habitable, above-grade living space.

<https://www.hud.gov/sites/documents/41502C3HSGH.PDF>

Basements and Below-Grade Finished Areas

Fannie Mae Selling Guide, May 1, 2018
B4-1.3-05, Improvements Section of the Appraisal Report

Fannie Mae considers a level to be below-grade if any portion of it is below-grade, regardless of the quality of its finish or the window area of any room. Therefore, a walk-out basement with finished rooms would not be included in the above-grade room count. Rooms that are not included in the above-grade room count may add substantially to the value of a property, particularly when the quality of the finish is high. For that reason, the appraiser should report the basement or other partially below-grade areas separately and make appropriate adjustments for them on the Basement & Finished Rooms Below-Grade line in the Sales Comparison Approach adjustment grid.



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FHA/HUD Guidelines

4150.2 Property Analysis

Finished basements and unfinished attic areas are not included in total gross living area. The appraiser must match the measurement techniques used for the subject to the comparable sales. It is important to apply this measurement technique and report the building dimensions consistently because failure to do so can impair the quality of the appraisal report.

Another standard appraisers may voluntarily use, but is not required, is the American National Standards Institute (ANSI) *SQUARE FOOTAGE—METHOD FOR CALCULATING: ANSI Z765-2013*. Simply put, ANSI states: “The above-grade finished square footage of a house is the sum of finished areas on levels that are entirely above grade. The below-grade finished square footage of a house is the sum of finished areas on levels that are wholly or partly below grade.”

According to ANSI, above-grade and below-grade square footage should be reported separately to more accurately compare properties.

It is important to understand that one of the main reasons for these guidelines is for consistent reporting of the square footage from one property to the next. Above-grade

square footage should be compared to above-grade square footage, and below-grade to below-grade. Fannie Mae does allow appraisers to deviate from these guidelines if a property is built into the side of a hill, where the majority of the lower level is outside of the hill, and the interior finish is equal to that of the rest of the house. In these cases, the appraiser could include the lower level in GLA, but Fannie Mae is clear that appraisers should be consistent when deviating from guidelines.

Craig Morley, former Chair of the Appraiser Certification and Licensing Board, has the following advice for appraisers:

1. Know what measurement standard is being used by the data verification source so that inappropriate adjustments for size are not being made due to inconsistencies in measurement standards.
2. Appraiser should be aware of the various measurement standards and explain to the client what standard is being used. If there are inconsistencies, the appraiser should understand and explain the inconsistencies and explain why or why not adjustments are made.
3. Don't be too mechanical in the application of size adjustments. If it is evident that the subject is the same or a similar model, but the data source is reporting inconsistent areas, either don't make adjustments or explain

the rationale of your adjustments.

4. Be consistent with what is customary in the market you are working. Most of the GSE's expect that the appraiser will do what is customary for the local market area to preserve the integrity of the analysis. If the appraiser is not consistent with the market, there can be some significant errors in the value conclusions.

Appraisers have a difficult job when valuing real estate and accurately calculating square footage, and GLA is vital to a credible appraisal report. Keep in mind that although appraisers may not include below-grade square footage in the GLA, they will still give value to the square footage, especially if the finish is of high quality. We all want consistency in valuing real property, and when appraisers use appropriate standards and are consistent in their approach, appraised values will be more accurate.



Appraisal Management Company National Registry Fee

The Appraisal Subcommittee (ASC) has set the National Registry Fee for Appraisal Management Companies (AMCs) at \$25 per appraiser performing an assignment for the AMC in the previous 12 months. H.B. 243 gave the Division authority to collect the fee and transmit it to the ASC. The Division and Appraiser Board are currently working on an administrative rule filing to implement this new law.

The Division and Board have also discussed when the Division will start collecting the National Registry Fee. The Division and Board have decided that starting in 2019, all AMCs that renew their registration will pay a National Registry fee for twelve months. Starting in 2020, all AMCs that renew their registration will pay a National Registry Fee for twenty-four months. After 2020, all AMCs will pay a National Registry Fee of twenty-four months when renewing their registration as AMCs are on a two year registration cycle.

2020-21 USPAP First Exposure Draft

On May 22, 2018 The Appraisal Standards Board (“ASB”) released the First Exposure Draft of proposed changes for the 2020-21 edition of the *Uniform Standards of Professional Appraisal Practice*. Public comments are due in writing to the ASB before the deadline of July 15, 2018. Public comments can be submitted by mail, email, and facsimile:

Mail: Appraisal Standards Board
The Appraisal Foundation
1155 15th Street, NW, Suite 1111
Washington, DC 2005

Email: asbcomments@appraisalfoundation.org

Fax: (202) 347-7727

The ASB is proposing changes to Reporting Options, SCOPE OF WORK RULE, Comments in Standards Rules, DEFINITIONS, and Other edits to improve clarity and enforceability of USPAP.

The First Exposure Draft outlines proposed changes as well as the rationale behind the proposed changes. The full text of the First Exposure Draft can be found here:

<https://appraisalfoundation.sharefile.com/share/view/s831128bd7ca4eb7b>



YOUR FIDUCIARY DUTY!

Chris Martindale, Investigator

The "Golden Rule" is not only a good idea to maintain healthy relations with friends, neighbors and acquaintances, it is also a maxim that is found in most of the world's major religions and cultures. The principal behind the "Golden Rule" is treating others as one would wish to be treated. When it comes to professional relationships, such as those between a licensee and their principal, the "Golden Rule" becomes the fiduciary rule.

A fiduciary is a person or organization that owes to another the duties of good faith and trust. This is the highest legal duty of one party to another. It also involves being bound ethically to act in the other person's best interest. When a licensee knowingly accepts a fiduciary duty on behalf of their

client, he or she is required to act in the best interest of the principal, with the principal's needs being placed first and foremost. This is both a legal and an ethical responsibility.

In reviewing the Administrative Rules, R162-2f-401a, affirmative duties required of all licensed individuals, it states:

An individual licensee shall:
(1) uphold the following fiduciary duties in the course of representing a principal:

- (a) **loyalty**, which obligates the agent to place the best interest of the principal above all other interests, including the agent's own;
- (b) **obedience**, which obligates the agent to obey all lawful instructions from the principal;
- (c) **full disclosure**, in which obligates the agent to inform the principal of any material fact the agent learns about: (i) the other party; or (ii) the transaction;
- (d) **confidentiality**, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any

known material fact concerning:
(i) a defect in the property; or (ii) the client's ability to perform on the contract;

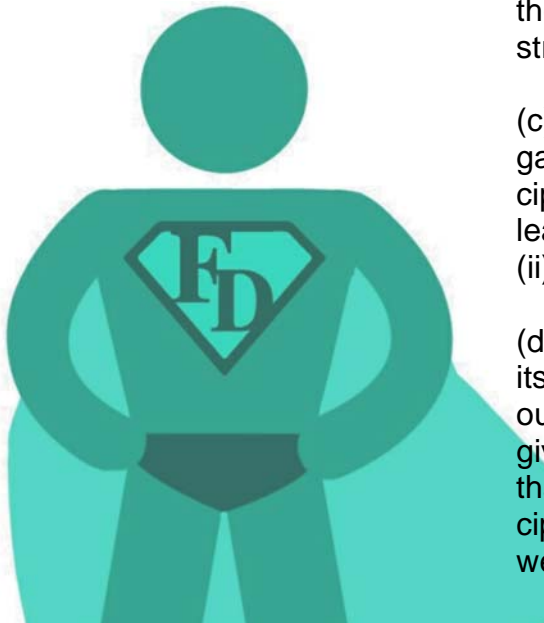
(e) **reasonable care and diligence**;

(f) **holding safe and accounting for all money or property entrusted to the agent**; and

(g) **any additional duties created by the agency agreement**;

In today's world of "what's in it for me," mean spirited, and often-times irrational and/or self-centered personal behavior, the notion of performing fiduciary duties on behalf of others may sound like a much antiquated or old fashioned concept that has been somehow transported from a much earlier and simpler time. Do not be deceived into thinking that today's real estate world has now evolved and such formerly high minded aspirations of fiduciary duties are no longer necessary, in vogue, or even required. As seen in the aforementioned Administrative Rules, a licensee is held to a very high standard of conduct when facilitating a real estate transaction.

This means that although a commission check is the ending goal, it should not be the most impor-



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tant objective. These rules should inspire a certain amount of self-reflection and prioritization of our personal standards. The needs of the principal are the foundation upon which we structure our conduct. It is very common for a principal to lack the knowledge required to carry out the sale of their home. Through a commission check or other valuable consideration, the principal is purchasing the use of your knowledge and abilities, and placing it with their own desire to obtain the best possible deal for themselves. The facilitated transaction should always be done in a manner that reflects this desire.

If an investigation by the Division reveals that a licensee has structured a deal to benefit the licensee over the principal, or has acted in any way that does not reflect the duties of a fiduciary, action can be taken against that individual's license. Even in a limited agency capacity where the parties have waived the right to undivided loyalty, absolute confidentiality, and full disclosure, a fiduciary duty to those clients is still required. However, it is now extended to both parties. In a limited, neutral capacity, the needs of the principals have to come first. If this fiduciary duty is upheld first and foremost, relationships are stronger, trust is maintained, and care and diligence can be carried out with minimal risks. If, as a licensee, you review and apply these rules, they will not only help keep the public safe, but will increase your sphere of influence and help your business grow!

Lead-Based Paint State Approved Forms

Due to perceived conflicts between the updated residential REPC, two State Approved forms, and Federal Law, the Real Estate Commission and Division have updated the *Lead-Based Paint Addendum to Real Estate Purchase Contract* and the *Disclosure and Acknowledgment Regarding Lead-Based Paint and/or Lead-Based Paint Hazards*. We would like to acknowledge and thank Kreg Wagner Legal Counsel for the Utah Association of Realtors and Shane Norris General Counsel at Summit Sotheby's International Realty for their assistance in updating these two forms. The Commission has voted to make both of these updated forms effective as of August 1, 2018.



Applicants For Licensure With A Criminal History

Recently, a licensee of the Division posed this question, "Why is anyone with a criminal background allowed to have a real estate license?" Each month, the Utah Division of Real Estate receives applications from hundreds of individuals who want to be licensed or who want to renew their license to practice as a professional in the real estate, mortgage, and appraisal industries. Utah law and administrative rules require that the Division consider the criminal history of each applicant.

Just as in the general population, criminal conduct occurs in a wide variety of applicants for many and varied reasons. Some applicants have committed serious and repeated crimes. Others have committed a single, minor, criminal offense. To be sure, the large majority of applicants have no criminal record at all.

The total number of individuals (not companies) licensed or registered with the Division of Real Estate is more than 30,000. A fraction of these individuals, at one time or another in their lives, have found themselves in criminal court and have a conviction or plea in abeyance on their record.

Some criminal conduct requires denial of an application for licensure such as any recent felony or a recent misdemeanor involving fraud or

theft. Serious criminal conduct that occurred long ago is still relevant to a person's qualification for licensure and might result in the denial of an application for licensure or a license may be granted on a probationary basis. All criminal conduct is reviewed and considered when the Division makes a licensing decision.

For example, the Division may review an application of a person in their 30s, 40s, or older who was convicted of a serious crime many years previously but has since led a model life. It is possible that this person be determined to be qualified for licensure but placed on probation for the first term of licensure due to their previous criminal conduct. Conversely, a 20 year old may apply for licensure within a year of a plea in abeyance for underage drinking at a high school party. Because of the recent occurrence of the conduct, this applicant would also likely be licensed on probation.

In another example, a principal broker who has worked in the industry for more than a decade could be involved in a minor traffic accident and cited for misdemeanor or negligence, or perhaps be involved in a domestic altercation for which the licensee feels she is not at fault but enters a plea in abeyance agreement to a misdemeanor assault charge on the advice of her attorney. This person could be

approved to renew her license and continue her livelihood despite a momentary lapse in judgment or a small mistake but because of the recent occurrence of her criminal conduct, her license would be renewed on probation.

However, not everyone with a criminal history who applies for licensure or to renew a license is approved. Some repeat offenders or persons who commit recent, serious crimes have been denied entry into the real estate industry or have been denied the opportunity of renewing their license. When the Division reviews criminal conduct by an applicant or licensee, we weigh the seriousness of the conduct, the number of occurrences, and the time since the conduct occurred. Each case is decided on the facts specific to the circumstances.

The mission of the Utah Division of Real Estate is "to protect the public and promote responsible business practices through education, licensure, and regulation of real estate, mortgage, and appraisal professionals." Sometimes, this mission requires that an application for licensure be denied or that a licensed professional lose the opportunity to continue to practice. At other times, we recognize that a person can change and improve their choices and a probationary license or licensure with no restriction is granted.

DIVISION Staff SPOTLIGHT



Chrishel James

Meet Chrishel! Chrishel is a member of the Division's Records Team, and deals with enforcement cases and filings and record keeping. She joined the Division in spring of 2016 and enjoys the change of pace as well as learning new functions and ways that the State of Utah benefits the public and businesses here in our State.

Chrishel has been working for State agencies for nearly 25 years, having worked for the Division of Human Services, Division of Securities and now the Division of Real Estate.

Born in Monument Valley, Utah, Chrishel is a member of the Navajo Nation. She is involved with the American Indian community and travels to Pow Wow's as much as she can both in and outside of Utah. Chrishel enjoys beading, baking, reading and traveling. Her favorite places to visit are Las Vegas and New York City.

Chrishel married her husband last August, who she met when she was just 13 years old! She's the oldest of 3 kids, very family oriented, and a proud auntie to 5 nieces and nephews.

Chrishel attended and graduated from Endicott College in Massachusetts where she lived for about 5 years before returning to Salt Lake City, where she's lived most of her life!

Utah! Division of Real Estate NEWS

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Division of Real Estate

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

No licensing or disciplinary actions occurred in the appraisal industry in Utah during the second quarter.

MORTGAGE

HESS, BRETT, mortgage loan originator, Eagle Mountain, Utah. In a stipulated order dated May 2, 2018, Mr. Hess admitted to having originated a number of loans under the name and license of another person in violation of Utah law and Administrative Code. Mr. Hess agreed to disgorge commissions he received from the transactions in the amount of \$13,141.46 and to pay a civil penalty of \$10,000, resulting in a total amount to be paid to the Division of \$23,141.46. In addition, Mr. Hess's license is placed on probation until December 31, 2019. Case number MG-16-80508

QUICKEN LOANS, mortgage entity, Detroit, Michigan. In a stipulated order dated May 2, 2018, Quicken Loans admitted to having engaged in false or misleading advertising in violation of Utah law. An advertising mailer sent by Quicken Loans had the appearance of a government agency document and indicated that urgent action should be taken by a specific date to secure favorable VA financing. In mitigation, the mailer had not been used since August 2014 and the

Division found no evidence that any borrower had relied on the advertising mailer in making a loan decision. Quicken Loans agreed to pay a civil penalty of \$3,000. Case number MG-14-72399

SEDILLO, ROBERT JOSEPH, mortgage loan originator, Mesa, Arizona. In an order dated March 28, 2018, Mr. Sedillo's license was granted and placed on probation for the initial licensing period due to criminal history. Case number MG-18-99156

REAL ESTATE

ALLRED, WHITNEY ROGER, sales agent, Spring City, Utah. In an order dated March 27, 2018, Mr. Allred's license was renewed and placed on probation for one year due to a plea in abeyance in a criminal matter. Case number RE-18-99098

ANDERSEN, DON L., principal broker, Orem, Utah. In a stipulated order dated April 18, 2018, Mr. Andersen admitted, among other admissions, to having failed to remit funds to his clients, comingling his money with his client's money, and diverting client funds from their intended purpose, in violation of Utah law/administrative rules. He also admitted to having failed to uphold his fiduciary duties to his clients of loyalty, reasonable care and diligence, and holding safe and accounting for all money entrusted to

the agent. Mr. Andersen agreed to have his license revoked and not reapply for licensure for a minimum of 60 months. Case numbers RE-12-62142, RE-13-63287, and RE-14-72264

ARAVE, STEVE, sales agent, Ammon, Idaho. In a stipulated order dated May 30, 2018, Mr. Arave admitted to having failed to disclose a plea in abeyance agreement in a criminal matter in his application for licensure, in violation of Utah law/administrative rules. Mr. Arave agreed to pay a civil penalty of \$500 and that his license would be on probation for the initial licensing period. Case number RE-18-100226

BENNETT, TIM P., sales agent, Hurricane, Utah. In an order dated May 18, 2018, Mr. Bennett's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-100556

CARTER, SHANE R., sales agent, Cedar City, Utah. In an order dated March 7, 2018, Mr. Carter's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-18-98631

CHRISTENSEN, ROCKY, sales agent, Eagle Mountain, Utah. In an order dated March 13, 2018, Mr. Christensen's license was granted and placed on probation for one year due

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to a plea in abeyance agreement in a criminal matter. Case number RE-18-98759

CLUFF, CORBY LES, sales agent, Midway, Utah. In an order dated April 17, 2018, Mr. Cluff's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-99654

CURTIS, RIKKI, sales agent, Sandy, Utah. In an order dated April 3, 2018, Ms. Curtis's license was renewed and placed on probation due to a pending criminal matter. Case number RE-18-99291

DURR, BRADLEY THOMAS, sales agent, South Jordan, Utah. In an order dated May 16, 2018, Mr. Durr's license was granted and immediately suspended until September 17, 2019, due to the prior suspension of his credential in another profession. Case number RE-18-100481

EADS, KEVIN C., sales agent, Pleasant Grove, Utah. In an order dated April 4, 2018, Mr. Eads's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-99304

ENGLAND, RIVER, continuing education instructor, Sandy, Utah. In an order dated April 27, 2018, Mr. England'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-18-99997

ENGVALL, TRAVIS RAY, sales agent, Park City, Utah. In an order dated May 22, 2018, Mr. Engvall's license was granted and placed on probation for one year period due to a plea in abeyance agreement in a criminal matter. Case number RE-18-100686

FERGUSON, JENNY LYNN, sales agent, Alpine, Utah. In an order dated May 18, 2018, Ms. Ferguson's license was renewed and placed on probation due to a pending criminal matter. Case number RE-18-100554

FLOOR, SAMUEL DAVID, sales agent, Salt Lake City, Utah. In an order dated May 22, 2018, Mr. Floor'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-18-100687

FRANCO, NATALIA, sales agent, Salt Lake City, Utah. In an order dated May 16, 2018, Ms. Franco'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-18-100486

GOMAR, JULIO C., principal broker, South Jordan, Utah. In an order dated April 5, 2018, Mr. Gomar's license was renewed and placed on probation for one year due to a plea in abeyance agreement in a criminal matter. Case number RE-18-99362

GOMEZ, DONALD I., sales agent, Ogden, Utah. In an order dated May 16, 2018, Mr. Gomez's license was granted and placed on probation for the

initial licensing period due to criminal history. Case number RE-18-100483

GRECO, CLINTON, sales agent, Santa Clara, Utah. In an order dated April 3, 2018, Mr. Greco's license was renewed and placed on probation for the renewal period due to criminal history. Case number RE-18-99275

HERBERT, JENNIFER CLAIR, sales agent, Lehi, Utah. In an order dated April 12, 2018, Ms. Herbert's license was renewed and placed on probation for the renewal period due to a pending criminal matter. Case number RE-18-99574

HOFFMAN, SUANNE, associate broker, Highland, Utah. In a stipulated order dated April 18, 2018, Ms. Hoffman admitted to having failed to include her brokerage information for advertisements on various websites such as KSL, Facebook, and Twitter, in violation of Utah law/administrative rules. In mitigation, Ms. Hoffman had hired someone to post the advertisements for her and once she learned of the defect, the issue was immediately remedied. She agreed to pay a civil penalty of \$150. Case numbers RE-14-70953, RE-14-72676, and RE-14-78326

HOUSTON, H. THAYNE, principal broker, St. George, Utah. In a stipulated order dated April 18, 2018, Mr. Houston admitted to participating in a marketing services agreement which did not reflect a proportionate allocation of costs between his company and the mortgage company, in violation of Utah administrative rules. Mr.

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Houston agreed to pay a civil penalty of \$5,000. Case number RE-17-96027

KAYCE, ROB, sales agent, Herriman, Utah. In an order dated May 4, 2018, Mr. Kayce's license was renewed and placed on probation for the renewal period due to a plea in abeyance agreement in a criminal matter. Case number RE-18-100223

KOWALK, JORDAN MARK, sales agent, South Jordan, Utah. In an order dated May 16, 2018, Mr. Kowalk's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-100485

KNOX, JOSHUA B., sales agent, South Jordan, Utah. In a stipulated order dated April 18, 2018, Mr. Knox admitted to having made a substantial, intentional misrepresentation of a character likely to influence, persuade, or induce action, in violation of Utah law. He also admitted that he failed to disclose in writing to all parties compensation in addition to his real estate commission, prepared a document that did not reflect the true terms of the transaction, and that he knowingly participated in a transaction in which a false device was used, in violation of Utah Administrative Code. The transaction involved the lender in a short sale. Mr. Knox agreed that his license should be revoked and that he would not reapply for licensure for a minimum of 36 months. Case number RE-11-55468

LENNON, MATTHEW, sales agent, Sandy, Utah. In an order dated May

24, 2018, Mr. Lennon's license was granted and placed on probation for the initial licensing period due to a 2005 enforcement case with the Division involving a stipulation and fine and also due to criminal history. Case number RE-18-100732

LUCERO, MISTY REBEKAH, sales agent, Salt Lake City, Utah. In an order dated May 1, 2018, Ms. Lucero's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-100092

LUECK, KAMERON JAIME, sales agent, Parker, Colorado. In an order dated April 4, 2018, Mr. Lueck's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-99309

LUND, WHITNEY D. SR., sales agent, Salt Lake City, Utah. In an order dated April 26, 2018, Mr. Lund's application for licensure was denied due to his failure to disclose criminal history in his application for licensure and due to a final judgment and a consent agreement relating to Mr. Lund's conduct in participating in and offering securities for sale and serving as a transfer agent for securities. Case number RE-17-96624

MACGILLIVRAY, DUSTIN, sales agent, Riverton, Utah. In an order dated March 22, 2018, Mr. MacGillivray's license was denied due to criminal history. Case number RE-18-98951

MILITONI, SALES TAIONE, sales agent, Alpine, Utah. In an order dated March 13, 2018, Mr. Militoni's license was reinstated and placed on probation for the renewal period due to a regulatory action related to unlicensed activity in another industry in Utah. Case number RE-18-98752

NIELSEN, DOUG K., principal broker, Sandy, Utah. In a stipulated order dated May 30, 2018, Mr. Nielsen admitted to having violated administrative rules relating to advertising, supervision of licensees affiliated with his brokerage, providing required information or documents requested by the Division within ten business days, and acting as a neutral third party in a situation as a limited agent. Mr. Nielsen agreed to pay a civil penalty of \$6,000 and to complete nine hours of continuing education in addition to the continuing education required for his next license renewal. Case number RE-13-66709

PARKINSON, CASEY JAY, sales agent, Logan, Utah. In an order dated March 15, 2018, Mr. Parkinson's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-98788

PETERSEN, SCOTT C., sales agent, South Weber, Utah. In an order dated March 8, 2018, Mr. Petersen's license was renewed and placed on probation due to unpaid judgments and tax liens. Case number RE-18-98665

PHIPPS, NATHAN A., sales agent, American Fork, Utah. In an order

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dated April 5, 2018, Mr. Phipps's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-99363

REYNOLDS, TROY, dual broker, Eagle Mountain, Utah. In a stipulated order dated April 19, 2018, Mr. Reynolds admitted to having failed to account for or remit money belonging to another, having failed to furnish a copy of a transaction document, and having breached his fiduciary duty to his principal in a real estate transaction, in violation of Utah law. In addition, he admitted to having failed to return money to a property owner within 30 days of terminating a contract and to conform to accepted industry standards, in violation of Utah administrative rules. Mr. Reynolds agreed to pay a civil penalty of \$9,190.54 with a dollar for dollar credit for payments made to owners of properties that he managed and who had not received monies owed to them by Mr. Reynolds. In addition, Mr. Reynolds agreed to surrender any residual rights in his expired license and that he would not apply for a real estate license for a minimum of five years. Case numbers RE-114-72832, RE-14-73793, RE-15-78922, RE-15-79387, and RE-16-85199

SALINAS, GILBERT A., unlicensed, Sandy, Utah. In a stipulated order dated April 18, 2018, Mr. Salinas admitted to offering real estate services, including services buying and selling real property and acting as a short sale negotiator, despite not

being licensed as a real estate agent. Mr. Salinas's conduct was in violation of Utah law. Mr. Salinas agreed to pay a civil penalty of \$10,000. Case numbers RE-12-61775 and RE-15-75873

SIMONSEN, SCOTT J., sales agent, Herriman, Utah. In a stipulated order dated May 30, 2018, Mr. Simonsen admitted to having conducted unlicensed activity during a period when his license had expired, in violation of Utah law/administrative rules. Mr. Simonsen agreed to surrender any residual rights in his real estate sales agent license in lieu of the filing of a complaint and subsequently holding a hearing. Case number RE-18-13-67769

STEPHENS, TAYRN JAIME, sales agent, Salt Lake City, Utah. In an order dated March 30, 2018, Ms. Stephen's license was renewed and placed on probation for the renewal period due to a plea in abeyance agreement in a criminal matter. Case number RE-18-99193

TEVERE, MELANIE ASHLEY, Sales agent, South Jordan, Utah. In an order dated April 4, 2018, Ms. Tevere's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-99302

THREDGOLD, CHRISTOPHER JEFFREY, sales agent, Layton, Utah. In an order dated March 6, 2018, Mr. Thredgold's license was granted and placed on probation for the initial licensing period and until he has made regular and substantial child

support payments. The probation is a result of Mr. Thredgold's criminal history and an unpaid child support lien. Case number RE-18-98621

VAN HUSS, MATTHEW, sales agent, Hurricane, Utah. In an order dated March 8, 2018, Mr. Van Huss's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-98661

VASQUEZ, CHARLES EDWARD, sales agent, Salt Lake City, Utah. In an order dated April 27, 2018, Mr. Vasquez'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-18-99996

WISEMAN, PAUL, sales agent, Salt Lake City, Utah. In a stipulated order dated May 30, 2018, Mr. Wiseman admitted to having conducted unlicensed activity during a period when his license had expired, in violation of Utah law/administrative rules. Mr. Wiseman agreed to pay a civil penalty of \$5,000. Case number RE-15-75400

WOOD, J. TOM, associate broker, Washington, Utah. In a stipulated order dated May 30, 2018, Mr. Wood admitted to having operated property management services under business names different from his brokerage name. The property management services companies were not registered with the Division. Mr. Wood admits that his actions were in violation of Utah law/administrative rules. Mr. Wood agreed to pay a civil penalty of \$3,500 and to complete three hours of

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continuing education in addition to the continuing education required for his next license renewal. Case numbers RE-14-69187 and RE-14-72796

WORKMAN, TONY K., sales agent, West Point, Utah. In an order dated March 13, 2018, Mr. Workman's license was renewed and placed on probation for the renewal period due to a plea in abeyance in a criminal matter and a separate pending criminal matter. Case number RE-18-98754

YOUNG, TROY EUGENE, sales agent, Holladay, Utah. In an order dated March 23, 2018, Mr. Young's license was granted and placed on probation for the initial licensing period due to criminal history. Case number RE-18-98983

ZIEGLER, MARK C., sales agent, St. George, Utah. In an order dated April 5, 2018, Mr. Ziegler's license was renewed and placed on probation for one year due to a plea in abeyance agreement in a criminal matter. Case number RE-18-99361

TIME SHARE

ALMADA, CARLOS H., timeshare salesperson, South Jordan, Utah. In a stipulated order dated May 3, 2018, Mr. Almada admitted that he failed to disclose criminal history in his application for registration as a timeshare salesperson. Mr. Almada's application for registration was granted and he agreed to pay a civil

penalty in the amount of \$500. Case number TS-18-100473

MCCLURE, ROHAN H., time-share salesperson, Park City, Utah. In a stipulated order dated May 11, 2018, Mr. McClure admitted that he failed to disclose criminal history in his application for registration as a timeshare salesperson. Mr. McClure's application for registration was granted and he agreed to pay a civil penalty in the amount of \$2,500. Case number TS-18-100372

NARIMANI, KAVEH, timeshare salesperson, Salt Lake City, Utah. In a stipulated order dated May 16, 2018, Mr. Narimani admitted that he failed to disclose criminal history in his application for registration as a timeshare salesperson. Mr. Narimani's application for registration was granted and he agreed to pay a civil penalty in the amount of \$500. Case number TS-18-100473

-980 New Mortgage Licensees-

Required to Complete 5-Hour Utah MLO Course By October 21, 2018, To Renew Their 2019 License

There are 980 MLOs licensed in Utah that received their MLO license between 05/08/17 and 12/31/17. Each of these 980 MLOs are required to complete the new 5-hour Utah MLO Course by October 21, 2018 before they can renew their 2019 mortgage license. The 980 MLOs who need to complete the new Utah MLO Course can verify course completion records in their NMLS account.



Important NOTICE

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Rule Developments

Since April 1, 2018

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

Appraisal Management Company Rules

The Appraiser Board has approved the filing a proposed rule amendment to the AMC administrative rules. The primary changes proposed include the timing and content of notice from an AMC to appraisers on the AMC's panels, required communications between an AMC and its appraisers, and the manner by which an AMC offers an appraisal assignment to appraisers.

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

The proposed rule amendment will be filed and time allowed for public comment before the Board determines

whether to adopt the proposed amendment.

Appraisal

The Division has filed a proposed rule amendment which would adopt many of the appraiser qualification criteria changes recently adopted by the Appraiser Qualifications Board ("AQB"). The AQB establishes national minimum standards for appraisers. A state may adopt a stricter standard than that established by the AQB but may not allow a less strict standard. The proposed amendment would lower the minimum standard for appraiser qualification in the areas of appraiser experience and college education required to qualify for a particular appraiser credential.

Under the proposed amendment, the number of experience hours needed to qualify for a licensed appraiser credential would decrease from 2,000 hours to 1,000 hours. For the certified residential appraiser, the number of hours would decrease from 2,500 to 1,500. The minimum months required to obtain the required hours would also decrease. The proposed rule would reduce the required college educational requirement and provide alternative means for an applicant to obtain the required college education credits.

The proposed rule amendment has been filed with the Utah Office of Administrative Rules and is available for public comment through August 14, 2018.

Mortgage

The Division has filed a proposed rule amendment that would provide optional

experience points for a licensed mortgage loan originator working as a junior loan officer or assistant loan officer. Under circumstances outlined in the proposed rule, optional experience points may accumulate at the rate on one-half point per month. In July, the Mortgage Commission will determine whether to make the proposed rule effective.

Real Estate

The Division has filed a proposed rule amendment which would: 1) amend and clarify the exemption from licensing requirements for an owner of real property; 2) change the manner and content of qualifying experience points that a broker applicant may submit to the Division in an application for license; and 3) approve the use of lead-based paints forms available for use by licensees. If the proposed amendment is adopted, an individual applying for a broker license would select from the individual's documented experience at least 60 points but no more than 80 points for consideration and review by the Division of Real Estate.

The proposed rule amendment has been filed with the Utah Office of Administrative Rules and is available for public comment through August 14, 2018.

Timeshare and Camp Resort

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

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KAGIE'S KORNER

Can a Limited Agent be a principal in a real estate transaction? This question continues to come up so I thought I would take a few minutes to review several scenarios addressing this important issue and the applicable Administrative Rule which addresses this recurring matter.

Scenario #1 - Mr. Quick is the listing agent for Mr. Smith who needs to sell his property expeditiously. Offers unfortunately were not coming in as desired. Mr. Quick determined that he likes the property and he also desperately wants to help out his seller. Shortly thereafter, Mr. Quick has the seller (Mr. Smith) sign a limited agency agreement. Quick then signs the REPC himself (as the buyer). Mr. Quick is therefore acting as both the listing agent and the buyer in this transaction. Mr. Smith accepts the offer from Mr. Quick.

Scenario #2 - Mr. Jones is the principal broker for ABC Realty and he is selling his own property (or a property in which he has an ownership interest), which is listed through his brokerage. Mr. Adams, an agent affiliated with the same brokerage (ABC Realty), presents an offer to Mr. Jones from one of their clients. Mr. Adams has the buyer and Mr. Jones (the principal

broker), sign a limited agency agreement so that Mr. Jones can represent both parties. Mr. Jones (the Principal Broker and Seller) likes the offer but counters the offer with an addendum disclosing to the buyer that he is both the seller and a Utah Real Estate Principal Broker. The buyer accepts the counter offer and they are now under contract.

Scenario #3 - Mr. Green is a licensed agent and a member of XYZ Investments, LLC, which has a property listed for sale through a different brokerage. Mr. Green's friend (Jon Doe), hires Green as a buyer's agent by signing a Buyer Agency Agreement. While looking at properties Mr. Green suggests that Jon Doe look at the property that XYZ has for sale. Mr. Doe submits a Real Estate Purchase Contract which XYZ accepts.

In each of these three scenarios the licensees have breached their fiduciary duties to their clients. Even in instances when the licensee has their client sign a Limited Agency Agreement, and signs an addendum declaring that the licensee is acting as a buyer or seller, and acting as a licensee (in any capacity), the licensee has broken fiduciary du-

ties owed to their client by acting as a principal in the transaction.

A licensee CANNOT simultaneously look out for their client's best interests when they are functioning as a principal in the transaction. In all three scenarios cited, the licensee has breached fiduciary duties owed to their client and are in violation of Administrative Rule R162-2f-401a(4), and R162-2f-401b (15) act(ing) or attempt(ing) to act as a limited agent in any transaction in which (a) the licensee is a principal in the transaction; or (b) an entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

The Division would like to remind our licensees that you cannot represent the other party in a transaction when you are a principal in the sale. If a licensee acts as a principal in a transaction, they can only represent themselves. They should have the other party sign a disclosure that they are in fact a licensee acting as a buyer or seller and that they are NOT representing any other party in the transaction. If in doubt we recommend that you primarily contact your Principal or Branch Broker or secondarily reach out to the Division for guidance.

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CARAVAN 2018 - Recap -



Over five weeks in April and May, the Division completed nine CARAVAN stops in Utah cities including Park City, Vernal, Layton, Provo, Moab, Richfield, Cedar City, St. George, and Logan. There were constructive and interactive conversations, presentations, and questions from Division staff members and licensee participants throughout the state.

Director Stewart spoke about H.B. 243 which went into effect on May 8, 2018. To read about the statutory changes in H.B. 243 you can read the Director's Message in the First Quarter Newsletter [HERE](#).

Director Stewart also spoke about a few administrative rules that have recently gone into effect or will be going out for public comment in the near future. These rule changes include a real estate rule filing that went into effect on January 1, 2018. This real estate filing included a new State Approved Form: **DEPOSIT OF EARNEST MONEY**

WITH TITLE INSURANCE COMPANY ADDENDUM TO REAL ESTATE PURCHASE CONTRACT.

This rule filing also clarified the responsibility of a branch broker and included changes to R162-2f-401a – *Affirmative Duties of all Licensed Individuals* and R162-2f-401c – *Additional Provisions Applicable to Brokers*. For complete details of these changes you can read the Rule Development section of the 2017 4th Quarter Newsletter [HERE](#).

An additional rule filing Director Stewart spoke about was one recently approved by the Mortgage Commission with a public comment period that concluded on June 14, 2018. This rule filing proposed changes to R162-2c-501a – *Optional Experience Equivalency calculation* (under Option 2 of the Lending Manager application form). This proposed rule filing would allow a licensed mortgage loan originator applying to become a Lending Manager to count 30 months of full-time experience working as a Junior Loan Officer or Assistant Loan Officer as one year of optional equivalency experience as a first-lien residential mortgage loan originator.

The last administrative rule filing Director Stewart spoke about was one voted on by the Appraisal Board dealing with Appraisal Man-

agement Companies and will be filed for public comment in the near future.

In conclusion Director Stewart spoke about misrepresentations and gave real case examples involving real estate professionals around the country. In short, licensed professionals operating in the Real Estate, Mortgage, and Appraisal industries need to be careful when making statements or withholding information. Licensees should not withhold information



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they know should be disclosed and they should not make statements as fact when they have no knowledge that what they are saying is fact. Withholding information could be an intentional or negligent omission and making untrue statements could be an intentional or negligent misrepresentation depending on what the licensee actually knows. The goal of the discussion was to get licensees to think about the transactions they have been involved in and to make sure licensees are careful in what they say and what they choose to disclose.

Mark Fagergren, the Director of Licensing & Education highlighted total licensing numbers and the corresponding prior year growth rate: Mortgage 6,057 (+34%), Real Estate 22,757 (+6.24%), and a concerning drop in appraisal numbers to 1,174 (minus -2.08%). Mark also explained a recent rule change allowing a significant license application fee reduction for Licensed or Certified Residential Appraisers **who within six months of renewing their license** receive a license “upgrade” to their appraisal license.



Mark presented information on recent college education and experience hour reductions to federal appraisal licensing qualifications that went into effect on 05/01/18. He also discussed how the Utah Appraisal Licensing & Certification Board was in the process via rule-making of adopting most of the federal minimum licensing requirements. [These rules have now been filed with the Utah Division of Administrative Rules and are available for public comment] The details of the federal qualification changes were outlined by Mark in the First Quarter Division Newsletter (pages 5-7), found [HERE](#).

Mark shared information of how licensees are reaping significant benefits from two electronic notification systems created by the Division, for the aid and assistance of real estate licensees:

1. **Monthly (real-time) Principal and Broker Affiliated Licensee Notifications** have been functional since January 2016 (2 ½

years). Current and accurate information is graphically displayed including upcoming license renewal deadlines, affiliated licensees’ current continuing education (CE) course completion balances (CORE Topic & Elective hours), whether the licensees under the broker’s supervision are required to complete the “New Agent Course” prior to license renewal, and whether the licensee has completed the course. And,

2. **License Renewal e-mail Notifications to all Licensees** have been occurring since October of

2013 (for nearly five years). Sales Agents and Associate, Branch, and Principal Brokers receive sequential (until the licensee renews) friendly e-mail license renewal reminders and continuing education course completion balance notices 45, 30, 15 days prior to the expiration of their license, and 1 day after their license expires.

These reminder notification systems have contributed in a meaningful way to an overall substantial reduction in undesired or unintentional license expirations, unknowing or inadvertent unlicensed real estate activity, and even a significant decrease in hurry up – last minute rush – CE course enrollments in the waning hours just prior to license expiration. Thanks to all licensees for your attention to detail and for your prompt attention to renewal requirements and deadlines.

Mark discussed real estate licensee tax appeal assistance and comparable sales selection. Licensees should select comparable sales as close to January 1st of the tax year being appealed (preferably prior to January 1st) and select good comparable sales (i.e. as close in location, style, age, quality, condition, etc.) to the subject property. Remember tax appeal representatives are appraisers who only consider gross living area (GLA) as finished above grade square footage (see Director Stewart’s Director’s Message on Appraiser Square Footage, Gross Living Area, and

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Finished Basements on the first page of this newsletter).

Mark also discussed how unfortunately in far too many instances real estate broker applicants are submitting non-qualifying experience. The troublesome qualifying experience often comes from either new home construction or commercial real estate transactions, especially in instances where they are not required to use the State Approved REPC.

Common problems observed with a number of Broker applications are a failure to provide requested written documents including:

- 1- The creation of agency agreements (Listing, Buyer Broker, or Limited), and
- 2- Subsequent confirmation of agency agreements in purchase contracts with the clients that they represent. (Either in the REPC or in a Purchase Contract prepared by legal counsel for buyer or seller which includes substantially similar agency confirmation language incorporated in or attached to the non-state approved purchase contract. (61-2f-306(2), and R162-2f-401a (2), (6), (10), and (11)).

Mortgage licensees were advised of the progress of the Nationwide Mortgage Licensing System (NMLS) 2.0 licensing software overhaul, which is scheduled to

occur in September of this year. This much anticipated licensing system redesign projected roll out date is very close to the annual license renewal period starting in November 2018. For this reason the actual roll out date may be bumped until the late Winter or Spring of 2019.



Mortgage continuing education courses are no longer tracked through the Utah Division of Real Estate. **Mortgage licensees are now able to track CE course completion records in their individual NMLS accounts.** CE Courses that are currently tracked in the NMLS are the **2-hour Utah Law Course (or the Division CARAVAN Course substitution), and the new 5-hour New Utah MLO Course.** There are 980 MLOs licensed in Utah that received their MLO license between 05/08/17 and 12/31/18. Each of these 980 MLOs are required to complete the new 5-hour Utah MLO Course by October 21, 2018 in order to renew their 2019 mortgage license. The 980 MLOs who need to complete the new Utah MLO Course can

verify course completion records in their NMLS account.

The Chief Investigator of the Division, Kadee Wright, started her enforcement presentation covering statistics for the 2017 calendar year:

Mortgage

Complaints Received:.....	43
Cases Opened:.....	47
Cases Closed:.....	48
Current open investigations:...	69

Real Estate

Complaints Received:.....	367
Cases Opened:.....	240
Cases Closed:.....	284
Current open investigations:..	338

Appraisal Complaints

Received:	47
Cases Opened:	42
Cases Closed:	47
Current open investigations:....	23

Licenses Sanctioned in 2017=106	
Mortgage:	6*
Appraisal:.....	9*
Real Estate:	91*

*This equates to sanctions against fewer than 1% of licensees in each industry.

Mrs. Wright discussed recent complaints, cases and the violations imposed. The cases discussed involved real estate, mortgage and appraisal industries.

Appraisal Violations Discussed:

- Certifying that the Appraiser inspected the property when they

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had not, and failing to disclose assistance.

- Allowing assignment results to be biased.
- Failing to analyze comparable data for a credible report.
- Failing to respond to the Division in an investigation.

Mortgage Violations Discussed:

- Working on behalf of more than one entity at the same time.
- Making a false representation to the Division in an investigation.
- Making a false representation to induce a lender to extend credit.
- Failing to pay a third party (appraiser).

Real Estate Violations Discussed:

- Failing to disclose a material defect.
- Misrepresentation to a bank and dishonest dealings.
- Placing personal interests above those of your client.
- Failing to disclose that the licensee was a principal in the transaction.
- Failing to disclose additional compensation received and failing to run funds through the brokerage.
- Commingling trust account funds and failing to account for funds belonging to another.
- Proposing a document or device that does not reflect the true terms of the transaction.



For reading the Utah Division of Real Estate quarterly Newsletter. Do you have a question you'd like answered or addressed in the next edition?

Send us an email!



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or
realestate@utah.gov

