UTAH RESIDENTIAL MORTGAGE
REGULATORY COMMISSION MEETING
Heber M. Wells Building
Room 250
9:00 a.m.
May 6, 2020
Google Meet

MINUTES

DIVISION MEMBERS PRESENT
Jonathan Stewart, Division Director
Justin Barney, Hearing Officer
Mark Fagergren. Licensing/Education Director
Kadee Wright, Chief Investigator
Maelynn Valentine, Board Secretary
Joy Natale, Division Analyst
Lark Martinez, Division Staff

COMMISSION MEMBERS PRESENT
Kay Ashton, Chair
Cathy Gardner, Commissioner
George Richards, Commissioner
Jeff England, Commissioner

The meeting on May 6, 2020 of the Utah Residential Mortgage Regulatory Commission began at approximately 9:01 a.m. with Chair Ashton conducting.

PLANNING AND ADMINISTRATIVE MATTERS
Approval of Minutes – A motion was made and seconded to approve the minutes of the meeting held April 1, 2020, as written. Vote: Chair Ashton, yes; Commissioner Gardner, yes; Commissioner Richards, yes; Commissioner England, yes. The motion is approved.

Public Comment Period
No public comment.

DIVISION REPORTS
Director's Report – Jonathan Stewart

Director Stewart reported that the Legislative changes will go into effect May 12th, 2020. The Business and Labor Interim Committee contacted the Division looking for topics to be studied in the interim. They have four or five meetings scheduled over the summer. Director Stewart asks the Commission and Division staff if they have any topics they could suggest for the Legislature to study. This would potentially lead to Legislation next year. Suggestion on topics would need to be submitted by the end of day. Topics can be submitted later, but they are trying to get agenda items for the earlier meetings. If the Commission or Division staff has any suggested topics that affect the mortgage industry that they think would be a good use of resources to have the Legislature study, please send them.

Chair Ashton raises a suggestion but is not sure if it would need to go through DFI (Division of Financial Institutions). In 1970, the Utah Legislature passed a law requiring lenders to pay interest on escrow accounts for mortgage loans that are being serviced. Because of that, Utah typically has a higher mortgage interest rate of about .25% as interest on escrow accounts is factored into the yield. However, the benefit of a few cents of annual interest on an escrow account is more than offset by a higher mortgage interest rate that might result in several hundred dollars more interest per year to a Utah borrower. Chair Ashton would like this issue to be suggested as a topic of study for Legislators. Director Stewart informs Chair Ashton that this topic is a DFI issue and he would be hesitant to send the suggested topic to the Legislator from the Division of Real Estate, considering that it affects a DFI statute. Chair Ashton has attempted in the past to contact DFI regarding this issue and has not received any feedback on the matter. Director Stewart will get Chair Ashton a contact at DFI to discuss the matter with them directly.

<u>Enforcement Report</u> – Kadee Wright
Ms. Wright reported in April the Division received two complaints; closed four cases; leaving 113 open mortgage cases. The AG's office has zero cases.

<u>Education/Licensing Report- Mark Fagergren</u>
Mr. Fagergren started with the continued discussion of the transition period when a Primary Lending Manager or a Branch Lending Manager departs from a mortgage company. Mr. Fagergren has asked Mr. Barney to give a legal perspective on where the Division stands and what it would require, if the Commission wanted to pursue having some kind of a time period for a mortgage company to find a replacement lending manager.

Mr. Barney has researched the statute that affects this matter and there is a provision in statute under Utah Code Section 61-2c-209 which says an entity may not conduct business unless it sponsors a PLM. That same section states that a licensed entity automatically becomes inactive the day on which the entity's sponsorship of a PLM terminates. In order to activate the license inactivated by the termination of the PLM, the mortgage company would need to sponsor another PLM. The issue that Mr. Barney was asked to look at is to determine if the Division could provide some type of Interim period for the entity to continue operating while they looked for and sponsored a new PLM. Mr. Barney states that section 209 does provide some rule making authority to the Division but it's limited in scope. It provides authority to define sponsorship and the procedures by which an entity may provide evidence of its sponsorship of a PLM. This does not allow the Division, by rule, to open a window where a mortgage company would remain active. If the Division and Commission decide they would like to change the current law, rule making authority could be expanded in that specific section or it would need to be in a statutory provision that says that the termination of the PLM doesn't automatically inactivate the license but the license would be inactivated after a certain period of time. This particular issue would not be able to be solved by administrative rule; it will require a statutory amendment. Mr. Fagergren asks if the provision is the same for a Branch Lending Manager. Mr. Barney believes it would be a different situation because the entity's license remains active as the mortgage company would still have a PLM. In some circumstances the PLM could become the Branch Manager or the licensees could transfer to another branch if one was available. Ms.

Martinez explains that the branch would be made inactive making all of the loan officers inactive in that branch or they can be moved to another branch. A third option would be to move the licensees to the entity office and the PLM would oversee them.

Commissioner Richards explains that in the real estate industry, a broker may supervise multiple branches and is curious if a BLM could possibly cover multiple branches. Mr. Barney explains that there are different statutes in real estate and mortgage and it would require a change in statute if they wanted to have the same procedure for the mortgage industry. Commissioner England explains that in most mortgage companies, the PLM is a very stable and reliable individual as where BLMs may move around and change locations many times within the company.

Chair Ashton explains that this situation would force his company to close as his mortgage company only has two locations in Utah with a total of ten employees and they would not have the option of bringing on a PLM in a timely manner. Commissioner Gardner explains that there is a benefit to the current rule but also sees the challenges that small lenders could be faced with if the PLM were to pass away or suddenly quit. She would like to see some sort of grace period given if one of those circumstances arose. Mr. Fagergren clarifies that the Division does work with mortgage companies in the event that there is a death of a PLM. In last month's meeting it was discussed the possibility of a five to ten day grace period be given to replace the PLM but Mr. Fagergren feels that in most circumstances five to ten days would not be enough time to replace that individual.

Chair Ashton asks if there is a designation for a control person within a company to where they may be able to act as PLM in the interim. Ms. Martinez explains that the control person is only a designation that is in the NMLS, it is not a license. The state of Utah has requirements for a control person but does not allow the control person to be the PLM without qualifying for the PLM license. Chair Ashton asks when attending AARMR meetings what the sense or feel is from other states as they do not have the PLM requirement. Mr. Fagergren says that in those open meetings it is not discussed but sometimes comes up after the meeting is adjourned. Regulators from other states comment that the Utah rule is good to have in place. Chair Ashton also agrees with the current rule and feels that it just needs the proper balance. He suggests that maybe it becomes a rule where there would need to be a branch manager if there are certain number of employees.

Commissioner Gardner suggests going in another direction by having the Commission look at each of the responsibilities that PLMs and BLMs perform and expanding their responsibilities in certain situations. For example, if a PLM is gone, there could be a designated BLM that has an expanded responsibility in the time frame of 30 to 60 days in order to replace the PLM. Ms. Martinez explains that the application process to apply as a Lending Manger is roughly 30 days from start to finish, if the required experience is documented. In the past, when there has been a PLM leave the company and they do have branch managers the Division, at times, has moved the BLM to the PLM position and have made that branch inactive and link them to the entity so the mortgage loan originators may continue to submit and close loans and not become inactive. Chair Ashton states that part of the challenge is that many times the individual that is running the operation within the state may not actually be the PLM. Director Stewart suggests that if a PLM leaves a company, the entity could designate one BLM to act as the PLM for up to 30 days and that the PLM could oversee more than one location. Mr. Fagergren explains that the number of employees that each PLM oversees or the distance between offices should be considered.

Chair Ashton states that the Commission should come up with a proposal for legislation and then proceed with a proposed statutory amendment. His proposal would be, if a company were to lose a PLM that they would be granted a 30 day period to replace the PLM, depending on the size of the company and that the PLM may be able to supervise more than one office. Mr. Fagergren asks for clarification where if a PLM leaves are the loan officers still able to close loans and do business. Commissioner Richards said that they should be able to process loans and to have the active BLM take responsibility of the loans in process during the 30 day period and would still require a PLM in place within 30 days. Chair Ashton's main concern is potential harm to the public if a mortgage company is not allowed to process loans due to the PLM leaving or passing away. He suggests some sort of modification to the rule.

Mr. Fagergren suggests that whatever is proposed, that the Commission should be happy with, because once the rule is in place it will be hard to go back. Ms. Martinez would like the Commission to take into consideration that in the real estate industry almost all of the licensees are located in the state of Utah whereas, in the mortgage industry there are branches located throughout the United States. So if the Commission is suggesting that a branch manager oversee more than one branch, they may want to have a distance requirement. It may not be appropriate for a branch manager to oversee a branch located in another state. The Commission agrees.

Chair Ashton asks Director Stewart if they are able to create a thread of emails amongst the Commissioners discussing the PLM situation in depth or if it is against the open meeting laws. Director Stewart explains that there can be no more than two Commissioners that can discuss any actionable items outside of a public meeting. As far as Legislation, what they would be discussing would not technically be an actionable item because it's ultimately up to the Legislature to decide if they are going to put this into statute. He suggests putting together a committee to include two Commissioners, two Division staff members and two industry members and they work together to come up with a recommendation to the full Commission. Chair Ashton asks the Commissioners who would like to participate to be on the committee, Commissioner England volunteers and Commissioner Gardner suggested that Chair Ashton be on the committee as he has direct impact as he is currently employed by a one man shop so his business would be affected if his PLM were to leave or pass away. The Division staff members that have been suggested are Lark Martinez who is the Mortgage Education Coordinator and Tim Cuthbertson who is a Mortgage Investigator. The industry members will be sought out by the committee members. All Commissioners agree on putting a committee together.

COMMISSION AND INDUSTRY ISSUES- Justin Barney

Mr. Barney reported that the purposed rule amendment that they have been working on has been submitted to the commerce department. Executive Director Parker has made his comment and it has been incorporated in the proposed rule amendment and has been submitted to the administrative rule section and will be open for public comment and will go on through July 1, 2020. It is moving forward.

A motion was made to adjourn the meeting. Vote: Chair Ashton, yes; Commissioner Gardner, yes ; Commissioner England, yes; Commissioner Richards, yes. The motion is approved. The meeting adjourned at 10:12 a.m.