

**UTAH RESIDENTIAL MORTGAGE
REGULATORY COMMISSION MEETING**

Heber M. Wells Building
Room 250
9:00 a.m.
June 3, 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
Stephen Gillies, Assistant Attorney General
Mike Page, Licensing Specialist
Tim Cuthbertson, Investigator
Marv Everett, Investigator

COMMISSION MEMBERS PRESENT

Kay Ashton, Chair
Cathy Gardner, Commissioner
George Richards, Commissioner
Jeff England, Commissioner
Scott Gibson, Vice Chair

The meeting on June 3, 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 May 6, 2020, as written. Vote: Chair Ashton, yes; Vice Chair Gibson, 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 Department of Commerce building is still closed to the public. A reopen date is being discussed but the Division does not have an exact date at this time. The Governor's office was forced into implementing the teleworking program early due to Covid-June 19; it was originally scheduled to roll out the summer of 2020. The state of Utah is currently dealing with budget shortfalls, the Department of Commerce and the Division of Real Estate have had to submit proposed cuts of 2, 5, and 10% to the Legislature. They will meet in mid-June to discuss revenue and new budgets and we will see then how it will affect the Division. The Legislature, the Department and the Division's main goal is to make sure there are no lay-offs. The Division will know more by mid-June on the outcome of the budget meeting.

Enforcement Report – Kadee Wright

Ms. Wright reported in May the Division received five complaints; closed three cases; leaving 115 open mortgage cases. The AG's office has zero cases.

Education/Licensing Report- Mark Fagergren

Mr. Fagergren did not have anything to report, but is looking forward to the discussion on the notes regarding the AD HOC committee meeting.

COMMISSION AND INDUSTRY ISSUES- Justin Barney

Mr. Barney reported that the purposed rule amendment that they have been working on has been published and is open for public comment until July 1, 2020. He will discuss in July's Commission meeting if there are any additional public comments and when the Commission would like to make the proposed rule amendment effective.

AD HOC Committee Meeting Summary- Chair Ashton

Chair Ashton started the discussion by giving a summary of the AD HOC Committee meeting. Perceived Objectives of the Utah Lending Manager (LM) Statue & Rules:

1. To Protect the Public against inexperienced companies and individuals originating mortgage loans in the State of Utah.
2. To protect the public and investors from companies and individuals who do not abide by the State and federal laws and rules either knowingly or unknowingly.
3. To protect investors who purchase mortgage loans and/or Mortgage Backed Securities (MBS).

Chair Ashton informs the meeting attendees the Members of the AD HOC committee and they include Lark Martinez, Tim Cuthbertson, Jeff England, Kay Ashton and Steve Hyatt. Chair Ashton explains as a starting point of discussion, the attached "Perceived Objectives of the Utah Lending Manager (LM) Statue & Rules:" were discussed. It was pointed out that anything we discussed would become recommendations, since any change would need to be passed by the Utah legislature. Our recommendations could go anywhere from "No Change" to "Remove the Utah Lending Manager Licensing Laws (to mirror what all of the other States are doing)."

Chair Ashton gives some background on the current rule explaining that Utah was among the first, if not the first, to require licensing of mortgage originators who worked for non-depository companies (we think in the year 2000). To the best of our knowledge, Utah remains the first and only State in the nation to require licensing of Lending Managers (LM), which occurred six years later in 2006. It was patterned after the Utah Real Estate Agent and Broker licensing laws. As

we understand it, Utah was aggressive in enacting these licensing laws because we were unfortunately among the top five states in the nation for mortgage fraud.

Much has changed in the Mortgage Industry since the original mortgage licensing laws were passed in Utah. Most notably were the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (SAFE Act) and the "Dodd-Frank Wall Street Reform and Consumer Protection Act" which became effective in July 2010. Both Acts came as a result of the 2007-2008 melt down.

The Committee felt like the concept of a Manager License is a good one. We don't ever want to go back to being known as a State with a lot of mortgage fraud. We recognize that anything which is done in regards to law changes has the potential for "unintended consequences." If nothing else we want to be cautious and prudent with our recommendations. Although we think it's important to have a proposal ready for the 2021 Legislative Session, we don't want to make a final recommendation without a lot of thought and discussion. We want to do our best to protect the public, and make sure mortgage companies with locations in Utah have a level playing field with out-of-state companies originating loans in Utah without a local presence. We also need to consider our changing world where more and more mortgage professionals are working remotely and not in a traditional branch office.

There are 6 topics that were mainly discussed, once they are explained, the floor will be open for discussion.

To start the discussion, this is the concept we discussed:

1. Each company would have a Principal Lending Manager (PLM) for the State of Utah, as currently stands.
2. A Branch Lending Manager (BLM) could manage up to a certain number of Mortgage Loan Originators (MLO'S). We kicked around a number of up to 50 MLO's.
3. A BLM could manage a certain number of branches. We kicked around a number of 5 branches.
4. The branches a BLM would manage would need to be within a certain mile radius of the office he/she works from. We kicked around a 25 mile radius. An employee working from home is under the direction of a BLM, but could be outside of the designated radius, as long as the branch they are tied to is within the designated radius (this may need further discussion).
5. If a PLM unexpectedly leaves a company, a company would have a certain period of time to replace the PLM. We kicked around 30 days. Each of the branches would need to have a BLM in place until the company has a new PLM. During the time a company is operating without a PLM, they would need to designate with the DRE, who the responsible party is for the company during the interim (This may not be necessary since the NMLS system shows a "control person" for each company).
6. If a BLM leaves a company unexpectedly, the PLM would oversee those branches for up to a certain period of time (we kicked around the 30 day time), until a new BLM would be in place.

Ms. Martinez pointed out that there have been some circumstances where a PLM and several BLM's have left a company at the same time to join another company, or start a new company. This topic needs further discussion as to what best serves the public in these circumstances. Another thing to consider: If the Statue is changed, does it make sense to have the Statue be more limited in defining specifics, and have the specifics defined by Rule. That would make it

easier for the Division and Commission to modify Rules, rather than have to go back to the Legislature, when circumstances change or if it makes more sense to do things differently.

Director Stewart thanks the Commission and committee members for taking time out of their schedules to meet and discuss the topic. He did want to mention that the main issue that needs to be dealt with is the protection of the public. He explains that if a loan is put on hold because a PLM is no longer with the company and if the loan remains on hold until the PLM is replaced, a borrower may be harmed by the loss of a locked interest rate or a default in closing a real estate transaction. He believes that the main focus on any change that is made should be on solving the consumer's problem waiting for their loan to be originated and processed. Director Stewart also says that he is in favor of incrementalism, although it may not be the best solution to problems, as a regulator he has noticed that once the door is open on a topic it is almost impossible to bring it back, so any step that is taken, big or small, once people get used to it, you can't take it back. He advises that the Commission and the committee implement the least disruptive change that could be tested to potentially solve the problem. He gives an example that happened several years ago in real estate where the Division was approached by an industry member who had an issue with a statute that he wanted changed. This individual pitched the issue as a huge issue in the industry and that it needed to be changed. The Division went through a lot of time and effort to make the change and it turns out only 15 licensees out of 25,000 took advantage of the law change despite the allegation to the Division that it was a huge problem.

Director Stewart advises using caution when making changes as the bigger the change and the more drastic the change it could cause more confusion, so he suggests a small change to solve the problem. Director Stewart delivers Marv Everett's suggestion. In the event that a PLM leaves a company, a contract processor is still able to process loans that are currently in the pipeline, until a new BLM could be identified and sponsored and affiliated with the entity. This suggestion would solve two things, 1. It would help consumers who have loans in the pipeline; and 2. It would incentivize companies to identify a PLM or be prepared to have someone step in to become the PLM in the event that a PLM leaves. There are currently industry members that do not have any interest in becoming the PLM, but if companies came up with an incentive to become lending managers then that would prepare them if their PLM were to leave.

Mr. Everett explains that there are a lot of processors who are licensed as mortgage loan originators with the companies that they work for. If a mortgage company loses the PLM and the company becomes inactive, then the processor can still process loans as a contract processor. Loans that are not currently locked will not be able to be processed as the loan originator will be inactive and cannot lock loan rates. However, locked loans could continue to be processed. This would help the consumer as they will not have to wait until a replacement PLM is in place and they will still be able to close the loan.

Director Stewart explains that allowing the processors to continue to work on loans would not require a statutory change. Chair Ashton would like to see some flexibility for the Division and the Commission on how the lending manager law is administered in the future. Director Stewart informs the Commission that if they would like to change the rule making authority, that it be narrowly defined as the Legislature does not like to approve broad rule making authority. Chair Ashton asks if the provision for real estate companies that one broker can manage several offices, if that is in statute or rule. Director Stewart informs Chair Ashton that it is in statute.

Vice Chair Gibson gives his input on the matter and believes that if they were to allow a BLM to cover more than one branch and they were within a larger mileage radius suitable (If approved) to rural Utah, specifically in southern Utah, if a mortgage company were to lose the PLM then the BLM could step in and become the PLM which would allow other branch managers to absorb that branch to allow an immediate recovery so there would not be an inactive period for that branch. He would like the Commission to consider expanding mileage for branches that are located in rural areas throughout the state of Utah along with management of multiple branches being allowed.

Commissioner Richards asks how many MLO's can be managed by a BLM. Chair Ashton answers that there is no definition for that. Commissioner Richards suggests not making a statutory change for now and just doing it in rule and then if needed, pursue a statutory change later on. Chair Ashton suggests for Mr. Barney to draft a proposed rule change so that the public is protected in the event that a PLM leaves a mortgage company and consumers are not waiting for their loans to close. Once the Legislative session comes around and the Commission decides its good timing, then to submit for a statutory change at that time. Mr. Barney explains that rules may only be made if the Legislature has provided rule making authority to the Division and the Commission. The Legislature prefers that rule making authority be narrowly drafted and at this point and time there is not the statutory authority to make the rule changes being suggested. Mr. Barney asks Director Stewart to clarify whether not a rule amendment was needed to allow processors to continue processing a loan if the PLM were no longer with the company. He clarifies that it does not require a rule amendment, but would be worth stating in policy that it can happen. However, Mr. Barney will draft a rule so that it's clear as to what is and isn't allowed and to set expectations.

Mr. Everett clarifies what the term "in process" would be and explains that a loan that is in process after the application is taken and documents are being gathered for underwriting. Chair Ashton suggests allowing Utah Housing loans to be processed as they are unable to lock the loan until the Utah Housing Corporation approves the loan and then locks as their rates are not negotiable like other programs. Mr. Everett clarifies that if a processor is licensed with a mortgage company then they would be able to continue processing the loan. If they are unlicensed, then the MLO may have to step in and continue processing as the company becomes inactive due to the PLM leaving the company. Commissioner Gardner explains it may not be as easy as turning the MLO into a processor as they think. The MLO would have to go through a contract change with the company and would be compensated differently once they took over processing, if the current processor was unlicensed.

A motion was made and seconded to have Mr. Barney draft a rule change clarifying that processors are able to continue processing if a mortgage company becomes inactive due to a PLM leaving the company. Vote: Chair Ashton, yes; Vice Chair Gibson, Yes; Commissioner Gardner, yes; Commissioner Richards, yes; Commissioner England, yes. The motion is approved.

Mr. Fagergren explains that this is a very rare instance that may occur and protecting the public is the most important aspect of this discussion.

Director Stewart advises the Commission that a motion is not necessary to instruct the Division to look at the possibility of drafting a rule, a motion is only necessary when approving a rule. Director Stewart suggests looking at rule making authority in statute to see if the Commission

and Division are allowed to make clarifications to the rule. If not, then no changes need to be made. He believes it would be good to have clarification to inform members of the industry that the law allows it. Justin will look into the statute and rules and report back in July's meeting as to what steps need to be taken, if any.

A motion was made to adjourn the meeting. Vote: Chair Ashton, yes; Vice Chair Gibson, Yes; Commissioner Gardner, yes; Commissioner England, yes; Commissioner Richards, yes. The motion is approved. The meeting adjourned at 10:17 a.m.