

BOARD OF REALTY REGULATION NEWSLETTER

VOLUME 4, ISSUE 2.....APRIL 2012

FRAUD ALERT: WATCH FOR BAD CHECKS

Don't get taken in by a Bad Check Fraud scheme! These scammers are extremely sophisticated. The documentation they provide appears very authentic. Further, they use names of real businesses and people in order to make their offer appear even more legitimate.

In this type of scam, the scammer contacts an agent expressing interest in purchasing a property. They then send a certified check - ostensibly in order to cover the purchase price or take care of the earnest money. The agent then deposits the check in her trust account. Very quickly, the scammer will contact the agent and say that they have decided not to go through with the purchase. They ask the agent to return the money. As an incentive, they tell the agent to keep whatever fees or penalties appear to be 'fair'. But the agent is instructed to return the balance. Unfortunately, the original check was fraudulent, so any amount the agent sends to the fraudster comes straight out of the agent's trust account and causes it to be deficient.

Many times, even your bank is unaware that the check is worthless. The bank might even advise you that the check is valid. However, if the fraudster's check is from a foreign bank, it can take days or weeks before it becomes clear that the 'certified' check is actually worthless. If you have already 'returned' the deposit to the fraudster or his designee, it is likely that you will never see that money again.

Do You Know How to Ledger?

Go to the Board of Realty's website
www.realestate.mt.gov : Trust Acct
to find out how to properly maintain
trust accounts and real estate files.

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BRR MEMBERS, STAFF & UPDATES

BOARD OF REALTY REGULATION MEMBERS

The Governor with Senate confirmation appoints board members. Members serve 4 year terms with a 2-term limit.

C.E. "ABE" ABRAMSON BOARD CHAIR

RE INDUSTRY MEMBER
MISSOULA, MT
Term Expires: 5/9/2015

CINDY WILLIS RE INDUSTRY MEMBER

POLSON, MT
Term Expires: 5/9/2013

SHIRLEY MCDERMOTT PUBLIC MEMBER

LAUREL, MT
Term Expires: 5/9/2015

LARRY MILLESS RE INDUSTRY MEMBER

CORVALLIS, MT
Term Expires: 5/9/2015

CONNIE WARDELL RE INDUSTRY MEMBER

BILLINGS, MT
Term Expires: 5/9/2015

PAT GOODOVER RE INDUSTRY MEMBER

GREAT FALLS, MT
Term Expires: 5/9/2012

STEPHEN HESS PUBLIC MEMBER

Butte, MT
Term Expires: 5/9/2014

HAVE YOU MOVED? MAKE SURE TO GET YOUR CHANGE OF ADDRESS TO US!

www.realestate.mt.gov :
Forms: General Forms:
Change Form

The Honorable Brian Schweitzer, Governor BOARD ADDRESS & CONTACT INFORMATION

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Barb McAlmond, Program Manager 406-841-2325
Mary Benevides, Application Specialist 406-841-2063

For information regarding education, contact:

Stacey Fossum, Education Director 406-841-2324

For information regarding audits, contact:

Marilyn Willson, Auditor 406-841-2321

For information regarding complaints, contact:

Teri Ray, Compliance Specialist 406-841-2336



Reverse Redlining



By: Connie Wardell, Industry Member, Board of Realty Regulation

Redlining was the practice of controlling the racial makeup of neighborhoods by only showing houses in the appropriate neighborhood. It was a practice of financial institutions as well as real estate licensees. Those of us who have been licensees since the '60s may have personal knowledge of a redlining incident. We all learned that you did not talk about "only this school" or "only this neighborhood" as an appropriate location for a specific client, regardless of the criteria for the statement. And if a protected class is involved, it is blatantly illegal under the Civil Rights laws of the 1960s and 1970s.

In the current soft housing market, it is important to note that these laws still apply and they are not related only to racial steering. Attempting to verbally eliminate an area for purchase consideration is

redlining. For example, in an effort to encourage sales of high-end properties, licensees may make questionable representations such as "this is the only really good school in our area" or "only our better educated parents live in this area." Most recently, I was told by a young doctor relocating to our area that they were told that locating in a particular high-priced neighborhood would guarantee that his children would associate with children "more like his in upbringing." All of these statements are questionable.

A properly priced, well-maintained property in any area will sell to a qualified buyer without discriminating or "snob-oriented" statements. A good practice is to show similarly priced properties in several different neighborhoods. Take your client to the school and let them judge for themselves if it is the best fit for them. Price does not influence the definition.

HUD Issues New LBGT Fair Housing Rules

Reprinted with Permission from ARELLO Boundaries March 2012

The U.S. Department of Housing and Urban Development (HUD) has issued new rules that advance its ongoing efforts to prevent housing discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals and families. The final rules generally track HUD's January 2011 rule proposal, which recited evidence suggesting that LGBT families are being arbitrarily excluded from housing opportunities in the private sector.

According to HUD's announcement, and a blog post authored by Secretary Shaun Donovan, the new rules will open access to housing for LGBT individuals and families in four principal ways. First, the rules contain an equal access provision clarifying that housing financed or insured by HUD [FHA] must be made available without regard to actual or perceived sexual orientation, gender identity or perceived sexual orientation, gender identity or marital status. This aspect of the rules applies whether or not the property is renter- or owner-occupied. Second, the rules prohibit owners and operators of HUD-funded housing, or housing

whose financing is insured by HUD, from asking about sexual orientation or gender identity, or denying housing on that basis. Third, the new rules clarify that the term "family" includes LGBT individuals and couples as eligible beneficiaries of HUD's public housing and voucher programs. Thus, otherwise eligible families may not be excluded because one or more members of the family may be an LGBT individual, have an LGBT relationship or be perceived to be such an individual or in such relationship. Finally, according to Secretary Donovan, "The rule makes clear that sexual orientation and gender identity should not and cannot be part of any lending decision when it comes to getting an FHA-insured mortgage. Particularly with the FHA playing an elevated role in the housing market today, this represents a critical step in ensuring that LGBT Americans have fair access to the dream of responsible, sustainable homeownership." The new rules were published in the [U.S. Federal Register](#) on February 3rd and will take effect on March 5, 2012.

BOARD POSITION ON REFERRAL COMPANIES

Adopted by the Board of Realty Regulation October 7, 2011

The Montana Board of Realty Regulation (Board) wishes to remind licensees that persons who make referrals for compensation must be licensed and that the licensee must not pay a referral fee to an unlicensed person.

The Board has discussed the subject of companies or persons who engage in the business of real estate lead generations and referrals. The companies have argued that they are not making referrals, they are merely providing 'leads' to real estate agents. The Board has determined that leads and referrals are the same thing and that lead generation companies are, in fact, making referrals to licensees in exchange for compensation. Paying referrals to unlicensed people is prohibited.

A "broker" includes:

- (a) someone who charges an advance fee in connection with a contract to list property or for referral of information concerning real estate to brokers; or

(b) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property.

See MCA 37-51-102 (4)(a),(c),(f), &(g).

Brokers may not pay a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson. *MCA 37-51-321 (l)(p) and ARM24-210-641 (5)(af).*

In sum: Engaging in the business of selling real estate 'leads' for a fee IS within the definition of a 'broker' and is the practice of real estate. If an unlicensed person is receiving fees for referrals/leads, they are acting as an unlicensed broker and are in violation of *MCA 37-51-301*. A licensee who assists in the practice by paying for leads from unlicensed persons may also be violating the law. *MCA 37-51-321 (l)(p) and ARM24-210-641(5)(af).*

ATTENTION ALL LICENSEES!

A NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION WAS POSTED MARCH 16, 2012 TO WWW.REALESTATE.MT.GOV : REGS: RULE NOTICES

CONCERNED PERSONS MAY PRESENT THEIR DATA, VIEWS OR ARGUMENTS EITHER ORALLY OR IN WRITING AT THE HEARING ON APRIL 17, 2012. WRITTEN COMMENTS MAY ALSO BE SUBMITTED TO dlibsdrre@mt.gov .

FHA Signals Decreased Seller Concessions, Tightens Insurance Standards

Reprinted with Permission from ARELLO Boundaries March 2012

On January 20th, the Department of Housing and Urban Development/Federal Housing Administration (HUD/FHA) issued an announcement that signals a coming change in the amount of allowable seller concessions in FHA-insured mortgage loan transactions. The announcement also declared new, final rules that are designed to protect and strengthen the FHA's Mutual Mortgage Insurance Fund (MMIF) through stricter "Lender Insurance" standards.

The FHA said that that it will soon issue a proposed rule that will reduce maximum allowable seller concessions from the current level "...to one more in line with industry norms." FHA seller concessions, the amounts that a seller can pay toward a buyer's closing costs in a transaction involving an FHA-insured loan, are currently set at six percent of the lesser of the home's sales price or the appraised value. In a July 2010 rulemaking notice, the FHA proposed a reduction of allowable concession to three percent because the higher level creates excessive risk by providing an incentive to inflate appraised values. The 2010 proposal called for an across-the-board decrease that generated significant resistance from industry stakeholders. However, *Inman News* and other industry observers have speculated that the final rule will establish a variable seller concession that will depend on the amount of the insured loan and other risk factors. FHA said that once the new proposal is published, a 30-day comment period will be provided after which a final rule will be issued.

In the same announcement, the FHA declared the finalization of stricter rules for FHA mortgage insurance underwriting in order protect the MMIF, which is the largest of the insurance funds that support federal mortgage insurance programs. FHA-insured single family mortgages are originated and underwritten through the "Direct Endorsement" process, under which mortgagees first

determine that a proposed mortgage is eligible for FHA insurance, and then submit the required documents to the FHA for a pre-endorsement review. However, qualified mortgagees can obtain "Lender Insurance" status, which allows them to conduct their own pre-insurance review and insure the mortgage without prior approval. The new FHA regulations impose stricter qualification standards to obtain Lender Insurance status. And, for loans insured by Lender Insurance mortgagees, HUD can now require indemnification for up to five years from the origination date for 'serious and material' violations of FHA origination requirements and for fraud and misrepresentation of which the mortgagee "knew or should have known", such that "...the mortgage never should have been endorsed by the lender." The new Lender Insurance rules include termination, reinstatement and other program clarifications and will take effect 30 days after they are published in the U.S. Federal Register. According to the FHA, more than 80 percent of all FHA "forward" mortgage loans are insured by Lender Insurance mortgagees.



Have a question?
Email
dlibsdrre@mt.gov

Counterpoint: Appraisers Defend Use of Distressed Property "Comps", Call Criticism "Nonsense"

Reprinted with Permission from ARELLO Boundaries March 2012

Over the last several years, the real estate appraisal industry has been the subject of intense scrutiny from the news media, industry organizations, legislators and others regarding the purported role that "faulty" appraisals played in the U.S. housing "bubble", its eventual collapse and, more recently, in the slow recovery of housing markets. One of the more recent salvos was fired by the National Association of Homebuilders (NAHB) in a news release that blamed new-home market woes on "the inappropriate use of distressed and foreclosed sales as comparables in determining new home values" [as reported in the January issue of *Boundaries*]. The Appraisal Foundation responded by saying that many builders do not understand the fundamental principles of real estate appraisal, while the Appraisal Institute labels the assertions as "nonsense".

The NAHB's news release asserted that the use of distressed/foreclosed property sales as new-home "comps" is driving down home prices, killing sales, causing job loss and delaying the U.S. housing and economic recovery. But a responsive letter from Appraisal Foundation Director of Appraisal Issues, John S. Brennan, points out that appraisers do not determine property values; they simply reflect and analyze the actions of buyers and sellers in the marketplace in order to produce a credible opinion of value. Brennan notes that there are numerous reasons why an appraiser may have to consider comparables that are not as physically similar to the subject property as may be desired.

For example, Brennan explains that in many current residential marketplaces "distress sales" (foreclosures, bank-owned properties, short sales, etc.) are common and appraisers may be *required* to determine their market impact. He notes that distress sales can impact the value of other properties because "...in [some] markets buyers may be reluctant to pay more for [a] property than the price level set by the distress sales...". Brennan also points out that if the number of distress sales (or available distress properties) represents virtually the only activity occurring in a given marketplace, the distress activity may actually *become* the marketplace.

NAHB's criticism of distress sale "comps" also cited its recent member survey in which "53 percent of builders surveyed reported appraised values that came in lower than the cost to construct." The Appraisal Foundation responds by explaining the key appraisal "Principle of Substitution" which, as described by Mr. Brennan, states that "...knowledgeable and typically motivated buyers would not pay more for a property if a similar property could be built or if competing properties are available in that marketplace for a lower price." Brennan's letter asserts that many builders fail to recognize that cost does not equal value, noting that, "In 'depressed' markets, it may be common for buyers to be unwilling to pay the full cost to construct a home; in appraisal, this is known as 'external obsolescence', which is a loss in value due to factors outside the subject property."

NAHB also claimed that the use of distressed home "comps" have contributed to choked-off credit for home builders and threatens to prolong the current housing downturn. Brennan's letter responds by pointing out that all state-licensed and certified real estate appraisers in the U.S. are required by the Uniform Standards of Professional Appraisal Practice (USPAP) to be independent, impartial, objective and to perform assignments without bias. The letter refers the NAHB to the Dodd-Frank Wall Street Reform and Consumer Protection Act, which also mandates appraiser independence and prohibits attempts to unduly influence an appraiser. Brennan writes, "To even suggest that appraisers are subjective in the performance of their appraisals is contrary to an appraiser's most basic ethical obligations under USPAP."



DISCIPLINARY ACTION (January-March 2012)

****All disciplinary action is now reported in the newsletter****

Christopher Axtell #2011-0178-RRE

The screening panel of the Board of Realty Regulation had previously found reasonable cause to believe Mr. Axtell violated MCA 37-1-316(18) (Generally accepted standards of practice), ARM 24.210.641(1)(a) (licensee shall comply with the generally accepted standards of practice), ARM 24.210.641(5)(ak) (a licensee shall not engage in business while expired or on inactive status), ARM 24.210.641(5)(aj) (failing to respond to a request from the board).

The charges stem from the licensee submitting a request to change to a new broker; however, he failed to send in a change form with the new broker's signature. On January 21, 2011, the Board requested a change of business address or a letter from Licensee requesting inactive status. They requested the information again on February 14, 2011. Mr. Axtell did not respond to the requests or the complaint filed against him. A Notice of Proposed Board Action and Opportunity for Hearing was filed against Mr. Axtell but he failed to request a hearing. The Adjudication panel ordered that Mr. Axtell's license be revoked. If he requests reinstatement by the board, he must satisfy all requirements for licensure. The Adjudication panel also included a fine of \$1000.00 administrative fine which must be paid before the board will issue any license in the future.

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Colleen Hill #2009-036-RRE, #2009-137-RRE and #2011-049-RRE

The screening panel of the Board of Realty Regulation had previously found reasonable cause to believe Ms. Hill violated ARM 24.210.828(3)(g) (committing act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any like act), ARM 24.210.828(3)(i) (failing to make reasonable efforts to perform),

ARM 24.210.805(6)(property manager shall timely transfer funds), ARM 24.210.805(10)(d)(a record which shows the chronological sequence in which funds are received and disbursed), MCA 37-1-316(13)(misappropriating property or funds), MCA 37-1-316(18)(generally accepted standards of practice), MCA 37-1-316(4)(signing or issuing, a document or statement that contains a false or misleading statement), MCA 37-1-316(5)(misleading, deceptive, false or fraudulent advertisement or other representation), MCA 37-1-316(14)(interference with an investigation), ARM 24.210.805(6)(b)(timely transfer funds), ARM 24.210.828(3)(w)(failure to repay the recovery account), ARM 24.210.641(5)(a)(engaging in activities that constitute the practice of law), ARM 24.210.641(1)(licensees shall document in writing any changes to the terms of an agreement)

The charges stem from three separate complaints. The first one was filed in October 2008. Ms. Marta Cramer alleged that Licensee, acting as a property manager, failed to send security deposits and rent monies for three months. The second complaint was filed in May 2009 alleging Licensee failed to provide monthly statements of receipts, disbursements and charges, and failed to remit collected funds. The third complaint was filed in October 2010 alleging a failure to repay the recovery account. A joint Notice of Proposed Board Action and Opportunity for Hearing was filed against Licensee.

Ms. Hill failed to request a hearing. The Adjudication panel revoked Ms. Hill's property manager license and ordered that she may not apply for any real estate license type for a period of two years. The panel also imposed a \$1000.00 administrative fine that must be paid before licensee may reapply for any real estate license.

DISCIPLINARY ACTION (January-March 2012)

****All disciplinary action is now reported in the newsletter****

Jon Ussin #2011-0208-RRE

The screening panel of the Board of Realty Regulation had previously found reasonable cause to believe Mr. Ussin violated the following statutes and/or administrative rules: MCA 37-1-316(18) (Generally accepted standards of practice), MCA 37-1-141(5)(b) (practicing after a license has expired), MCA 37-51-301(1) (unlawful to engage in business without a license), MCA 37-51-301(2) (license must be delivered to real estate broker with whom the salesperson is associated with), ARM 24.210.641(1) (generally accepted standards of practice), 5)(a)(k) (shall not engage in business at a time when license is expired), ARM 24.210.635(1) (license will renew on or before date set).

The charges stem from the licensee practicing real estate on an expired license between December 15, 2010 and April 1, 2011. Mr. Ussin, who is a supervising broker, also had two salespeople working under him who also practiced real estate on an expired license during that same time frame.

A Notice of Proposed Board Action was sent to Mr. Ussin on June 22, 2010. Mr. Ussin signed a stipulated agreement agreeing to an administrative fine in the amount of \$600.00. The fine is to be paid within sixty days of the date of the Final Order in this matter.

BRR CALENDAR: April-June 2012

APRIL

19th: "Day with the Board" class--Kalispell

24th: **Committee Meetings**

- **Screening Panel (Closed)**
- **Education Committee (Open)**

25th: **Full Board Meeting (Open)**

26-27th: MAR Spring Meetings

MAY

8th: "Day with the Board"--Madison Beaverhead BOR

10th: "Day with the Board"—Eastern Montana BOR

22nd: "Trust Acctg. For Property Managers" class--Helena

May 24-25th: Rookie Course (Bozeman)

May 25th: Supervising Broker Pre-Endorsement Course (Bozeman)

JUNE

7th: **Committee Meetings**

- **Screening Panel (Closed)**
- **Education Committee (Open)**

8th: **Full Board Meeting (Open)**

27th: "Day with the Board"--GAR (Bozeman)