

MEETING NOTES January 17, 2024

Keeping in Touch – The Basics

Mail Item of Value \* Email \* Call/Text \* Hand-Written Note \* Social Media Snuggle \* Pop-By

Pick 3 each month for each contact and watch your business grow!

11 Listings

5 Under Contract

11Buyers Under Contract

2 Closed Transactions

$800 SSL Fee starting Jan 2025

DATES TO REMEMBER

Sales Meeting 1/17

Daybreak Realtors 1/18

CE CLASS 1/24 1 HR CE

Canopy Mortgage Interest Rates

$500k SFR, 20% down, owner occupied, 740 credit score

This Week Last Meeting

Conv 30 YR 6.875 6.875

Conv 15 YR 6.000 6.000

FHA 30 YR 6.125 6.250

VA 30 YR 6.125. 6.250

Invest 20% 8.000 8.000

STATISTICS: Market Analysis UAR Market Analysis <https://utahrealtors.com/realtors/market-statistics/>

1. Welcome to Lisa Radke!

2. Congratulations to Kelly Tita for winning a discounted drone photo shoot!

3. You can now pay invoices with a credit card.

4. February mailers

5. Website updates [www.sellingsaltlake.com](http://www.sellingsaltlake.com)

Go to Agent’s Page, passcode 9876

6. **2022-2024 Code of Ethics Requirement**

The National Association of Realtors® requires all Realtors® and Appraisers to complete a Code of Ethics course on a recurring basis. The Salt Lake Board of Realtors® also requires Affiliate members with keys to fulfill this requirement. If the last time you took a Code of Ethics course was prior to 2022, you must take one this year to remain compliant.

**Our Recommendations:**

* Take our online course, [**ETHICS AT WORK**](https://r20.rs6.net/tn.jsp?f=001Mr3iuG7KeeAtYtt-v4Y_EVnpiQYhWG20i-nxt38EGKg_N1Aa_k7irgJM-DrFbgKA_dZQ5KyF8nvcjOMyBVdNeE2H1HuneHuhA3bJEduBIr3_Kgnkb9jtv1doNdIlR6MX4_pFiYN_XIq9D_fgu2iYOGFhkHNHJBvQtEAJP1cMeId2-TntiSFSIzXaX3KyfmMPqnayTmTfIwjVfwNr6PoidcS23606LaX4rMjtmaF0SoqNhbsfmrmMWTekagrCFYY0WQABMcvfpPSn5ZR6UFBezzDCQaT8FBLBFZ12am8X348NOO_tGYZnqo59PKG7KgPOyS1Tbq7TF34=&c=GsYNoxZtod8t5baXZsB4OEFUNDk02RAg-ikiILCFy0PIFKZAyThpJA==&ch=yfnNw2yKzWxA7jnoB1FjyAamEAvj-TYNBDrZZu2K0Zg1uBaxieJOdw==). Use the code **RPAC10** at checkout to save $10 on the course and enter the RPAC iPad giveaway. *You must purchase and complete the course in January to enter the giveaway.*
* Take one of our FREE, in person courses (Realtor® Code of Ethics / Advanced Code of Ethics / Code of Ethics for Realtors® and Appraisers). If you make an RPAC investment of $15 or more when you attend, you can also be entered for the giveaway. [**COURSE CALENDAR**](https://r20.rs6.net/tn.jsp?f=001Mr3iuG7KeeAtYtt-v4Y_EVnpiQYhWG20i-nxt38EGKg_N1Aa_k7irjhOr03NjxGvQjpBPlu7HGKaKY-eTpc7wZKyB0_B1fHtVoowfOy7lvVtgjriMaRHIFtN04hPF-ze2onZMfRivqDACjnn9H7N_KoSR-dU7Ja83JtybfAYlV8m_kCxuKa4Nw==&c=GsYNoxZtod8t5baXZsB4OEFUNDk02RAg-ikiILCFy0PIFKZAyThpJA==&ch=yfnNw2yKzWxA7jnoB1FjyAamEAvj-TYNBDrZZu2K0Zg1uBaxieJOdw==)

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7. 3. 4th Quarter RE Division Newsletter <https://realestate.utah.gov/newsletters/2023-q4/>

## **Director's Message - Appraiser Independence**

**By Director Stewart with significant appraisal assistance from Jeff Morley and Keven Ewell**

Many times over the years, Division staff have been asked by real estate agents about whether or not they can talk to an appraiser or provide comparable sales to an appraiser assigned to appraise a property they have listed or a property their buyer is purchasing. The answer everyone loves to hear, “it depends, “ applies to this question. This is where appraiser independence comes in and it is something appraisal, real estate, and mortgage licensees should all understand.

**Dodd-Frank**

When Congress enacted Dodd-Frank in 2010, it replaced the provisions found in the Home Valuation Code of Conduct or HVCC. The Dodd-Frank Act stated:

* In General

It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraiser independence as described in or pursuant to regulations prescribed under this section.

* Appraiser Independence

For purposes of subsection (a), acts or practices that violate appraiser independence shall include –

* any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;
* mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;
* seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and
* withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

There are some exceptions that licensees should be familiar with.

* Exceptions

The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:

* Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.
* Provide further detail, substantiation, or explanation for the appraiser’s value conclusion.
* Correct errors in the appraisal report.

So, can an agent speak to or provide comparable sales to an appraiser? Yes, nothing in appraiser independence prohibits a sales agent from speaking to or providing comparable sales to an appraiser. This is a matter of timing. It helps maintain appraiser independence when information is provided to the appraiser upfront, while the appraiser is in the process of estimating value. When an agent wants to provide information after the report is complete, it must be through the appraiser's client (lender). There is much more freedom in sharing information that the appraiser can consider prior to the completion of the report and delivery to the client. Once the report is delivered to the client it can only be changed when the client requests corrections, additional information, or details are provided by the client for reconsideration.

Appraisers should be familiar with these rules and be open to receiving data for consideration (provided that it is given in a manner consistent with appraiser independence terms identified above). Appraisers should not construe the act of providing data for consideration to automatically be a violation of AIR (Appraiser Independence Regulation). Appraisers should seek out the best available data from all sources and then employ their independent, impartial, and professional judgment in determining which data is most appropriate for a given assignment.

Keep in mind that when speaking to or providing comparable sales, you cannot compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate, or attempt to do any of these things to an appraiser. We have heard of agents threatening to file a complaint against the appraiser if the value did not come in right or if the appraiser refused to use certain comparable sales. Both of these would be strictly prohibited by appraiser independence. If you provide comparable sales to an appraiser they are not required to use them. It is up to the appraiser’s independent judgment to determine which comparable sales are the most similar to the subject property. Licensees should also know that once the appraiser has completed the assignment and submitted it to the client they are prohibited from discussing the assignment results with anyone other than the client or those designated by the client.

## **Kagie's Korner - Due on Sale**

##### **Due on Sale Clause - What Are Your Duties?**

Due to high interest rates, there has been a significant increase in seller financing transactions. As a licensed professional, you should be aware of your duties and obligations to the parties in a transaction regarding a due-on-sale clause.

R162-2f-401a. Affirmative Duties Required of Licensed Individuals. An individual licensee shall:

(6) before the execution of a binding purchase or lease agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance.

A due-on-sale clause, also known as an “acceleration or alienation clause” is a provision commonly attached to a mortgage. This allows the lender to call the loan due, in full, if the securing property is sold or transferred to a new owner.

Lenders include the due-on-sale clause provision to protect their financial interests. A change of ownership may make substantial modifications to the risk profile of the loan. Lenders can find out about a change of ownership in any number of ways: receiving the tax notice that is not in the borrower’s name, a change of property insurance providers, checking the property abstract with the county recorder’s office, when a seller changes the contact individual or the address where the monthly mortgage invoices are to be mailed, to name a few.

In today's market, lenders have a huge incentive to call the mortgage due upon a sale, and are indeed calling notes due, something the mortgage industry has not seen for decades. Interest rates have more than doubled in the past few years, and a lender now has a great incentive to invoke a due-on-sale clause to close out a low-interest rate loan.

Imagine the following scenario: a seller needs to sell and they enter into a seller financing purchase agreement because they have an interest rate of 2.8% that allows the buyer to “afford” the property. The buyer puts money down, takes possession and updates the insurance provider with the lender. The lender is notified of the change in insurance and realizes that the property has been sold. The lender calls the loan due. The buyer can’t qualify for the purchase at current rates. The seller has already invested the down payment received from the buyer into a new property. Who will be harmed when the lender calls the loan due? Both buyer and seller may be harmed. Buyer most likely used their available funds for the down payment and does not have cash available to pay off seller’s existing mortgage. Buyer may not qualify to obtain a new loan because current mortgage rates put the property out of buyer’s price range. Seller probably does not have funds available to pay off the note that is now due and faces foreclosure. Facing foreclosure, seller may feel pressured to foreclose against buyer.  As the agent involved, did you adequately inform (notify) the parties of this possibility? How did you clearly and unambiguously document your notification with your client? What now is your liability?

Most buyers and sellers are unaware of the due-on-sale clause and its ramifications. Ensure that you are protecting your clients and yourself by diligently informing them with adequate documentation of the probable risks associated with their financing decision and encourage the parties to research the due-on-sale issue thoroughly before entering into these types of transactions so they can make a well-informed decision.

## **Lead-Based Paint Disclosures**

Recently the EPA has been sending notices to Utah real estate brokerages of imminent inspections for compliance with the lead disclosure rules, Section 1018 of Title X. These notices were usually received two weeks before the audit and required a list of all residential transactions over the last three years, including housing type and usage. The EPA inspections can include up to 10 individual contracts and identified violations can lead to penalties up to $19,507 per violation.

**Seller Responsibilities**

Sellers and landlords must disclose known lead-based paint and hazards and provide available reports to buyers or renters. Sellers and landlords must give buyers and renters the pamphlet: [Protect Your Family From Lead in Your Home.](https://www.epa.gov/sites/default/files/2020-04/documents/lead-in-your-home-portrait-color-2020-508.pdf) Home buyers can get 10 days to conduct a lead-based paint inspection or risk assessment. The two parties have flexibility to negotiate key terms of the evaluation. Sales contracts and leasing agreements must include certain required language regarding notification and disclosure (Lead Warning Statement). These leasing agreements and sales contracts must be retained for three years.

**Agent Responsibilities**

What are your responsibilities as an agent?

Agents must ensure that sellers and landlords are aware of their obligations:

* Proper disclosures, signatures, and warning pamphlet;
* Opportunity to conduct appropriate inspections;
* Lease and sales contracts contain proper language and signatures (Lead Warning Statement); and
* Retain documentation of disclosure, warning pamphlet, and lead-based paint records for at least three years.

**Forms for Compliance**

Two forms to keep you and your clients safe:

* Disclosure & Acknowledgement Regarding Lead-Based Paint
	+ Fulfills obligations of disclosure and notice;
	+ Verifies receipt of disclosures, notices, and lead pamphlet; and
	+ Option to agree, modify, or waive 10-day inspection/risk assessment.
* Lead-Based Paint Addendum to the REPC
	+ Agreement about inspection/risk assessment and right to cancel.

**Failure to Comply**

What if the seller or landlord fails to comply?

* The agent is responsible if the seller or lessor fails to comply.
* However, an agent is not responsible for information withheld by the seller or lessor.

What if seller and agent fail to comply?

* Failure to comply does NOT invalidate leasing and sales contracts.
* But, there are very steep penalties:
	+ Possibility of triple damages, potential civil and criminal penalties.
	+ 35.88 Disclosure requirements for sellers and lessors.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs ***after*** the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser’s or lessee’s offer and will allow the purchaser or lessee an opportunity to review the information and possibly amend the offer. [24 CFR 35.88](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwir-_K4poiDAxVYKkQIHVXECGcQFnoECA0QAQ&url=https%3A%2F%2Fwww.hud.gov%2Fsites%2Fdocuments%2FDOC_12347.pdf&usg=AOvVaw1Opy_i28opqZYAupFdId2c&opi=89978449)

## **Foreclosure Rescue | by Laurel North | Enforcement Manager**

Foreclosure Rescue is a set of strategies and resources designed to help homeowners at risk of losing their homes due to mortgage delinquency. There are legitimate options where a homeowner can cure a delinquency such as:

1. Repayment Plan: You may be able to get an agreement to resume making your regular monthly payments, in addition to paying a portion of the past due payments each month until you are caught up.
2. Loan Modification: This involves adjusting the terms of your mortgage to make your mortgage payment more affordable. Lenders may agree to lower the interest rate, extend the loan term, or even reduce the principal balance.
3. Reinstatement: Your lender may be willing to discuss accepting the total amount owed to them in a lump sum by a specific date and will often be combined with a forbearance.
4. Forbearance: A forbearance agreement allows a homeowner to temporarily halt mortgage payments or make reduced payments for a specific period while they recover from financial hardship.
5. Claim Advance: If your mortgage is insured, you may qualify for an interest-free loan from your mortgage guarantor to bring your account current. The repayment of this loan may be delayed for several years.
6. Deed in Lieu of Foreclosure: Your lender may agree to accept your voluntary transfer of ownership of the property to the lender to avoid the foreclosure process.
7. Government Programs: Various federal and state government programs can help homeowners find solutions. The Home Affordable Modification Program and the Hardest Hit Fund can aid homeowners facing foreclosure.

A Foreclosure Rescue Scheme is a type of fraud that takes advantage of homeowners who have fallen behind on their mortgage payments and may include:

1. Telling a homeowner they can stay in their home and rent back from the “investor,” and the “investor” will bring the mortgage current at closing.
2. Convincing a homeowner to transfer title of the home to the “investor” as collateral. The “investor” promises that the homeowner can continue to live in the home for a few hundred dollars more than their original mortgage payment and repurchase it later, at market value, with new financing.
3. Asking a homeowner to provide seller financing for a loan on behalf of the “investor” until they are able to repurchase the home or the “investor” is able to pay off the loan amount. The seller finance loan is typically for the amount still owing on the mortgage, which may be significantly lower than the property’s market value. The “investor” will be responsible for making the homeowner’s mortgage payments.
4. At closing:
a. The homeowner transfers title to the “investor” or “investor’s company.”
b. The homeowner’s original mortgage stays in their name, but they no longer hold title to their home.
c. The “investor” sells the home, pockets the equity, and runs.
d. The “investor” defaults on the loan.
e. The homeowner is evicted and loses the house and all equity.

The Division is seeing more foreclosure rescue schemes by licensees each year. This a big concern because the unsophisticated and financially distressed homeowner meets a seemingly knowledgeable real estate licensee, and trusts that they know a way to help them keep their home. Unfortunately, what is occurring, is that the licensee is walking away with 10’s, and sometimes 100’s of thousands of dollars of equity in the home.
These transactions can occur in as little as one day where the licensee takes the distressed homeowner to a title company, has them sign over the title to the home, and the licensee brings current the mortgage default amount. Oftentimes, these are verbal agreements that occur quickly, with no written documents and no disclosures. We sometimes see written offers, but they seldom include all the necessary paperwork expected in a legitimate transaction.

Following are the Division statutes regulating Foreclosure Rescue:

61-2f-102 Definitions.

(16) “Foreclosure rescue” means, for compensation or with the expectation of receiving valuable consideration, to:

(a) engage, or offer to engage, in an act that:

(i) the person represents will assist a borrower in preventing a foreclosure; and
(ii) relates to a transaction involving the transfer of title to residential real property; or

(b) as an employee or agent of another person:

(i) solicit, or offer that the other person will engage in an act described in Subsection (16)(a); or
(ii) negotiate terms in relationship to an act described in Subsection (16)(a).

61-2f-401 Grounds for disciplinary action.

The following acts are unlawful and grounds for disciplinary action for a person licensed or required to be licensed under this chapter:

(22)

(a) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;

(b) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;

(c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:

(i) suggesting to the person that the licensee has a special relationship with the person’s lender or loan servicer; or
(ii) falsely representing or advertising that the licensee is acting on the behalf of:

(A) a government agency
(B) the person’s lender or loan servicer; or
(C) a nonprofit or charitable institution; or

(d) recommending or participating in a foreclosure rescue that requires a person to:

(i) transfer title to real estate to the licensee or to a third party with whom the licensee has a business relationship or financial interest;
(ii) make a mortgage payment to a person other than the person’s loan servicer; or
(iii) refrain from contacting the person’s

(A) lender;
(B) loan servicer;
(C) attorney;
(D) credit counselor; or
(E) housing counselor

If you come across a distressed homeowner who is at risk of losing their home through foreclosure, please assist them using your expertise by giving them legitimate ways to cure their mortgage delinquency. If they are unable to cure their delinquency through legitimate measures, ask them if you could list their home and help them move forward without compromising the equity in their home.