

O K L A H O M A REAL ESTATE APPRAISER BOARD NEWSLETTER



ISSUE #24

P.O. BOX 53408, OKLAHOMA CITY, OK 73152-3408

December 2006

Kim Holland, Chairperson

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 Tiffany Davis, Administrative Officer, Real Estate Appraiser Board
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LICENSING BREAKOUT

<u>MONTH/YEAR</u>	<u>CGA</u>	<u>CRA</u>	<u>SLA</u>	<u>Total</u>	<u>TRA</u>
5/1/98	427	376	418	1221	
6/1/00	424	385	661	1470	
8/1/01	390	370	750	1510	
4/1/02	394	360	649	1403	115
10/1/02	398	361	577	1336	213
2/1/03	394	371	558	1323	280
7/1/03	387	384	510	1281	360
1/1/04	387	399	473	1259	449
10/1/04	385	417	450	1252	494
1/1/05	387	419	442	1248	503
5/1/05	381	426	418	1225	468
9/1/05	379	432	401	1212	491
11/1/05	382	435	403	1220	491
4/1/06	379	444	391	1214	464
12/1/06	385	449	367	1201	400

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"Real integrity is doing the right thing, knowing that nobody's going to know whether you did it or not."

Oprah Winfrey

MESSAGE FROM THE DIRECTOR

As those of you who attended the Annual Appraiser Seminars in October already know, there have been a number of substantial changes to the statutes and administrative rules that govern the Real Estate Appraiser Board. Accordingly, to try to get everyone on the same sheet of music, this mailing will include one copy each of the Oklahoma Certified Real Estate Appraisers Act (Act), and one copy of Title 600, Oklahoma Administrative Code (Rules).

You will find short articles on Page 2 that explain the major changes both to the Rules and the Act. The articles should help you understand the changes. This is provided because it is important that you know, understand and comply with the Act and the Rules. Over the past few years, each of you has been impacted by a very serious effort both by the Appraisal Foundation and by the various credentialing jurisdictions to improve the quality and increase the quantity of USPAP instruction. The guidance contained therein are rules you must follow. We need to be as serious about the Act and the Board's Rules.

The Rules that accompany this newsletter include several provisions that were incorporated as emergency rules on November 1, 2006. These emergency rules will expire on July 14, 2007. Accordingly you will also find Notices of Rulemaking Intent and copies of proposed rules. These are exactly the same rules that went into effect as emergency rules. This rulemaking action is necessary to make the emergency rules permanent.

You will observe in the Notices that there is a comment period that opens on December 15, 2006 and closes on January 26, 2007. I would like to encourage each of you to read the proposed rules and if you have comments that you would like to make, please address them to my attention. Comments may be written or verbal, although written comments are preferred. Comments may be made by any means; i.e., letter, fax, or email. All comments will be assembled and provided to the Board members prior to the public hearing.

You will also note that there will be a public hearing on the rules. The hearing will be held on February 2, 2007 by the Board at its regularly scheduled session.

HOUSE BILL 2911 MAKES CHANGES TO REAL ESTATE APPRAISERS ACT

On May 16, 2006, Governor Brad Henry signed House Bill 2911 into law, with an effective date of November 1, 2006. There are numerous changes that you will notice that have come about as a result of this legislation. You will notice some of these; others will not be noted by the general appraiser community.

The most notable change is to the amount of the annual licensing fee. This has been increased from \$150.00 annually to \$300.00. This increase is the first change to the licensing fee since the Oklahoma Certified Real Estate Appraisers Act was signed into law in 1990. As you would imagine, this increase was required to offset the effects of time and inflation, and to allow sufficient resources for effective administration of the requirements of the Act.

Another change is to a jurisdictional issue that now includes language extending the jurisdiction of the Board to any person representing his or her self as a certified real estate appraiser. This includes those who may be suspended, revoked, or expired appraisers.

Those applying for a credential as a Trainee Appraiser will no longer be required to pass an examination. This requirement was removed because there is no examination written at the trainee appraiser level and the Appraiser Qualification Criteria do not place a requirement for examination on the trainee appraiser classification. Effective 1/1/08, the licensed appraiser examination (that trainees take now) will be amended to cover the 150 hours of required qualifying courses. It would be unrealistic to expect applicants for trainee appraiser to undergo this examination.

A very serious change to the statute alters the disciplinary sanctions that may be applied by the Board upon a finding that there has been a violation of the Act. This change allows the Board to impose one, or a combination of, the following disciplinary sanctions:

- Revocation with or without the right to reapply.
- Suspension for a period not to exceed 5 years.
- Probation, for a period and under such terms and conditions as may be deemed appropriate.
- Stipulations, limitations, restrictions and conditions relating to practice.
- Censure, including specific redress, if appropriate.
- Reprimand, wither public or private.
- Satisfactory completion of educational program or programs.
- Administrative fines ranging from \$50 to \$5,000.
- Payment of costs expended by the Board for legal fees and costs and probation and monitoring fees including, but not limited to administrative costs, witness fees and attorney fees.

Changes to the administrative rules necessitated by HB 2911 are discussed in the column to the immediate right of this one. A copy of the Act as it presently exists is being provided with this newsletter.

RULES CHANGES FOR 2006

There were several changes made to the Board's administrative rules (Rules) that took effect in 2006. The following are some of the changes that are the most significant.

Chapter 10 is entitled "Licensure and Certification Requirements." Changes to this chapter are described below.

OAC 600:10-1-4 was changed to remove the requirement that those applying for Trainee Appraiser take the examination. Present requirements are for the 75 hours initial qualifying education and also that the individual submit an REA Form 8 identifying a qualified supervisor.

OAC 600:10-1-6 has been changed to require a \$150 nonrefundable application fee for those applying for state licensed or certified residential appraiser. An additional change adds a \$225 application fee for those applying for certified general appraiser.

OAC 600:10-1-7 was changed to spell out, in more precise terms, the requirement that credential holders take the USPAP Update Course on a repeating two-year basis.

OAC 600:10-1-8 was changed to require a schedule of fees for course providers submitting for approval of courses and instructors. It also limits course and instructor approvals to a three year period. Finally, this section was changed to require providers to provide not less than seven days notice to the Board of courses to be presented and made provisions for unannounced compliance inspections by Board representatives.

OAC 600:10-1-16 had changes made to spell out the terms and conditions under which a supervisory appraiser may assume responsibility for more than three trainees, and leaving in place the authority for supervisors with more than three trainees presently existing to maintain those relationships until January 1, 2008. There are also changes that retain authority for state licensed appraisers, licensed under AQB Criteria, to supervise trainees until January 1, 2008.

Chapter 15 is entitled "Disciplinary Procedures." This chapter is used extensively by the staff, counsel and prosecutors, Changes to this chapter are described below.

OAC 600:15-1-6 had changes made that permit the Board to utilize its assigned counsel as a hearing officer for a limited number of purposes. These include items that can be described prehearing matters. There is also a change that requires any pretrial matters to be submitted to the Director or Counsel at least ten days prior to the scheduled hearing.

OAC 600:15-1-14 was changed to incorporate the disciplinary alternatives permitted by the changes to the Act. Those are detailed in the article in the column to the immediate left of this one.

A copy of the Rules as they presently exist are being provided with this newsletter.

When is "Close", Too Close for Comfort?

Written by: Karen Oberman, SRA & Alan Hummel, SRA
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Nepotism. Business relationships. Friendships. When should appraisers recognize the need to separate themselves from assignments that could be considered a conflict of interest or create the perception of bias?

As appraisers, we have ethical obligations to our profession and to the greater public trust to ensure that we are acting outside of personal interests. So what happens when a real property appraiser is married to a real estate agent? What happens when your best friend asks you to appraise his condo so he can tap into his equity for a new car? How about the appraiser who shares an office with a mortgage broker or lender? The appraiser whose close cousins are major homebuilders in a market area?

The Uniform Standards of Professional Appraisal Practice (USPAP) provide a great deal of flexibility to the appraiser, and do not prohibit the appraiser's working for a multitude of clients, on a variety of assignments, nor does it prohibit working with or for relatives, friends or close business partners.

USPAP does, however, obligate appraisers to not misrepresent their role when providing valuation services and to certify that they have performed the appraisal assignment with impartiality, objectivity, and independence, and without accommodation of personal interests.

So, where does that put the appraiser who is married to a real estate agent? Is it acceptable for that appraiser to take an assignment when their spouse is the listing or selling agent and has a contingency stake in seeing this "deal" go through? As it has already been pointed out, USPAP would not prohibit this arrangement; however, it is a question of ethics, which should be examined carefully by the appraiser.

The perception from a "public trust" point of view would tend to be that this may not be truly an "arm's length" appraisal. That perhaps, the appraiser, by virtue of their relationship with the real estate agent, would not be entirely objective because their spouse' income could be directly impacted by opinions that they conclude in the valuation process. But *could* the appraiser provide impartial, objective and independent opinions? Yes. But the appraiser has ethical obligations to make certain all of their clients and

intended users of this assignment are aware of the relationship. The clients and intended users should have the right to make a decision, on their own, as to whether or not they wish to rely on these conclusions or seek another appraiser to complete the assignment.

When these close relationships are not clearly disclosed prior to the acceptance of the assignment, then the appraiser risks a very real perception of acting unethically from both the appraiser's peers' point of view, as well as, the expectations of parties who are regular intended users for similar assignments.

Additionally, if there is a discernable pattern discovered, indicating that the appraiser is acting in a biased manner because of these relationships, charges of unethical behavior could be forthcoming.

So, when does the appraiser need to disclose a relationship? What if it's a spouse of a third cousin twice removed?! Like all other great appraisal answers...it depends. It is a judgment call and a business decision, but depending upon the relationship, it is ultimately the appraiser's responsibility to determine that ethics are maintained.

The possible perception of unethical behavior can erode the public trust which is essential to the appraisal profession and should be identified and addressed by the appraiser prior to the acceptance of an assignment. For consistent relationships with business partners, spouses, relatives, etc, then it is highly recommended that this is a part of your engagement letter. Clients need to be aware of the relationships *prior to* the acceptance of the assignment, and for your own protection you may wish to have this documented in your work-file records with written or signed evidence that you have informed them and that they are acceptable of this association.

Bottom line answer, before you make your decision, ask yourself; would I be comfortable standing before my client, my peers, my state board or a judge in defending this decision?

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"It is essential that appraisers develop and communicate their opinions to intended users of their services in a manner that is meaningful and not misleading."

Preamble, USPAP, Paragraph 1

FORMER APPRAISER PLEADS GUILTY

Lawrence Goodwin, 53, real estate appraiser, Noble, Oklahoma, pled guilty to one count of wire fraud in connection with his preparation of inflated appraisals. **Goodwin** was charged by information with one count of wire fraud on May 19, 2006.

Goodwin lost his Oklahoma license to conduct real estate appraisals on March 3, 2000. From approximately January 1, 2000 through July 10, 2002, according to the information, **Goodwin** prepared residential real estate appraisals at the request of brokers employed at Wells Fargo Financial and other financial service companies. **Christopher A. Richardson** who was employed at Wells Fargo from February 12, 2000 until Wells Fargo Financial terminated his employment on January 14, 2003, along with other brokers, would tell **Goodwin** that they needed particular appraisals to state that particular properties were worth particular values. **Richardson** and other brokers typically wanted properties to carry a value high enough to make their companies' services, such as refinancing, available to the property owners. If **Goodwin** responded that he could not create a legitimate appraisal for the requested value, **Richardson** would indicate that **Goodwin** should go ahead and create an appraisal for the value requested and would pay **Goodwin** extra money in exchange for a fraudulently inflated appraisal.

According to the plea agreement, the loss sustained as a result of **Goodwin's** conduct was in excess of \$1,000,000.

If convicted, **Goodwin** faces a maximum sentence of five years in federal prison, three years of supervised release and a \$250,000 fine.

Christopher A. Richardson, 31, Norman, Oklahoma was indicted on May 19, 2006 and charged with one count of wire fraud and three counts of conspiracy to commit computer intrusion. According to the indictment, he submitted inflated appraisals for approval and entered false information on Wells Fargo Financial's computer databases concerning the prices at which real property to be financed had sold in the past. The false information caused Wells and investors to approve and fund mortgages in amounts greater than the fair market value of the real estate securing the loans. In order to obtain large bonuses and further his career, according to the indictment, **Richardson** sought to broker as many loans as he could by complying with consumers' requests for financing whenever possible. One property identified in the indictment was **1713 Eagle Nest, Norman, Oklahoma**.

Richardson is also alleged to have obtained proprietary customer loan information of Wells so that he could solicit new customers for **First United Mortgage**, a financial services firm that **Richardson** helped establish after his termination from Wells. **Richardson** allegedly instructed **Aaron Barnes** as to how to obtain customer information from the Wells computers and paid **Barnes** to retrieve and print out Wells customer loan information. **Richardson** would then use the customer loan information to solicit potential customers for **First United Mortgage**, according to the indictment.

Aaron M. Barnes, 28, Stillwater, Oklahoma, a former manager of the Stillwater, Oklahoma branch of Wells Fargo Finance, was also charged by information with one count of conspiracy to commit computer intrusion and entered a guilty plea to that charge on June 7, 2006.

OKC METRO MORTGAGE FRAUD

A prominent Edmond Realtor could lose her real estate license if she pleads guilty in an alleged scheme to commit mortgage fraud in the sale of homes in Edmond's upscale Oak Tree addition.

Ann Campbell, an award-winning sales associate with Edmond's RE/MAX Associates and considered of the top real estate sales people in the Oklahoma City metro area, has arranged to enter a plea Dec. 13 in the U.S. District Court for the Western District of Oklahoma, court documents show.

The charge, which stems from actions in 2003, is conspiracy to commit wire fraud, which carries a penalty of up to five years in prison and a fine of up to \$250,000.

The alleged scheme at Oak Tree involved artificially inflating the sales prices of homes and falsifying loan documents, prosecutors allege. Campbell was among four who have scheduled to enter pleas in coming days.

Prosecutors allege that Campbell conspired to commit wire fraud in the sale of the home at 5916 Morning Dove Lane, a few doors away from her home in Oak Tree. Campbell meant to profit "by concealing the true source of closing costs once the lender had determined that certain closing costs could not be paid by the seller," prosecutors allege.

Campbell accepted contracts from buyers who agreed to pay prices "well above" homes' original list prices, "caused the HUD-1 settlement statement to falsely reflect that the buyer was paying certain closing costs," then "diverted payment of certain costs from the seller to the buyer," prosecutors allege.

Others who are scheduled to enter pleas in the home sales investigations were:

- Dalton Joe Alford, charged with engaging in a monetary transaction in criminally derived property and aiding and abetting, scheduled to enter a plea on Dec. 7. The charge carries a penalty of up to 10 years in prison and fine up to \$250,000. Alford does not hold a real estate license, according to the real estate commission.

- Toney Charles Mykel of Edmond, charged with misprision of a felony, that is, not reporting a felony he knew to have been committed, scheduled to enter a plea on Dec. 12. The charge carries a penalty of up to three years in prison and fine up to \$250,000. Mykel's real estate license expired in 2001, according to the real estate commission.

- Anthony Jew, charged with engaging in a monetary transaction in criminally derived property, scheduled to enter a plea on Dec. 13. The charge carries a penalty of up to 10 years in prison and fine up to \$250,000. Jew does not have a real estate license, according to the real estate commission.

It was not clear Wednesday exactly how the Alford, Mykel and Jew cases are related to Campbell's, but all seem to be related to sales activities at Oak Tree.

The developments came close behind a federal indictment that accused seven people — home buyers, real estate sales people and a mortgage broker — of wire fraud, money laundering and other offenses in attempts to defraud lenders in buying homes in Oak Tree.

Houses at 1000 Irvine Drive, 1709 Irvine Drive, 5813 Dundee Terrace, 5916 Morning Dove Lane, 6125 Stonegate and 1208 Troone Drive in Edmond were involved, according to an indictment unsealed Nov. 9.

A (Professional) View of the Review

By Karen Oberman, SRA

As real property appraisers, we are all subject to our work product coming under scrutiny. Evaluations will occur from our clients; our clients' clients; our peers; regulatory authorities; our professional organizations; assessors' offices; court authorities and others.

If you are not familiar with the review process and the applicable USPAP requirements, take time to read Standard 3, along with AO 20. This article will not focus on "how" to do a review, but rather how "better" to complete a review, in a professional and convincing manner. The article is written as an overview of basic considerations for any review, recognizing that additional requirements may be necessary depending upon the scope of work for the type of review being completed. (Remember that any review should be approached from the point of view that was described in the scope of work identified in the report being reviewed. It's necessary both for the reviewer to read and understand the scope of work, as well as for the appraiser to adequately disclose and report the scope of work to the reader!)

If you find yourself in a position of reviewing another appraiser's work product, keep in mind the following:

1. Read the report in full prior to reaching "conclusions" on the quality of the work under review. The first key to a professional review of a work product is simply putting aside any personal bias ("nobody can write as well as I do!" -- "nobody knows this area like I do!") and READ the report. After thoroughly reading the report, *then* pick up your pencil and begin making notes.

Ask/Answer the following pertinent questions:

- Has the report been presented in a manner that is not misleading due to either omission or inclusion of factors or elements which would impact the reliability and credibility of the opinions conveyed?
- Has the reader been adequately informed of all factors (positive and negative), which could be considered pertinent to the assignment or conclusions derived?
- Does the appraiser appear to have a reasonable understanding of basic appraisal processes?
- Has the report been developed in such a manner, and does it contain sufficient information, to enable the client(s) and intended user(s) who receive the report to rely on and understand it properly?

2. Criticism should be relevant, non-personal and constructive. When providing comment or critique of the appraisal under review, remember that you are a professional and should write as one. Comments such as "*this is the worst appraisal I've ever seen!*" or "*this appraiser doesn't have a clue!*" are not relevant, unbiased or constructive and indicate a serious lack of professionalism. Comments should be reflective of the appraisal and not the appraiser under review.

3. Explain and support your criticism. When you find an area that you disagree with, support your conclusions. Don't simply state that "the site value in the cost approach wasn't supported." Rather, state what it is that you disagree with; state your opinion, and provide support for that opinion. For example:

The appraiser indicates a site value of \$20,000 in the cost approach. This does not appear to be market oriented or supported by the sources cited by the appraiser. Research by the reviewer for vacant site sales within 12 months preceding the effective date, and for sites containing within 3,000 SF of the subject site size, resulted in 25 sales with a value range of \$35,000 - \$45,000. (The reviewer can choose to supplement the review with an attached list of these sales or refer to and retain them in his/her work-file.)

4. Recognize differences between methodology and personal preference. Each appraiser's writing and communication style is unique. A good reviewer can distinguish between presentation and methodology. As an example -- while one appraiser may choose to report each sale as "average, good, excellent" etc, this is a matter of personal preference. It is equally acceptable for another appraiser to refer to the comparables as "superior or inferior". While there is no "right" or "wrong" way to write, or present an appraiser's opinion, there are arguably better ways. The emphasis should not be on whether the appraiser under review presents their information, support and analysis in the same fashion as the reviewer or perceived "peer standards", but rather, that the information presented is factually correct; relevant; pertinent to the problem being solved; and that recognized methodologies are utilized.

In the development of an appraisal, the appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible result. The report should provide enough detail and depth of analysis to reflect the complexity of the property being valued and should contain adequate documentation. The reviewer has an equal responsibility when evaluating another appraiser's work product.

DISCIPLINARY ACTIONS**Order 06-001, Dan W. Montague 10438CRA, Enid.**

Agreed Consent Order. Findings of fact: inappropriate comps, failure to properly describe and analyze the comps, incomplete presentation of relevant data concerning the subject property resulting in inflated and misleading valuation.

Conclusions of law: Violations of 59 O.S. § 858-723(a)(7), (8), and (9); § 858-723(a)(6): Conduct Section, Ethics Rule; Standard 1 and SR 1-1(a), (b), and (c), 1-2(e) and 1-3(a); Standard 2 and SR 2-1 and 2-2(a); USPAP.

Order: Suspended 30 days, May not hold himself out as commercial appraiser.

Order 06-002, Peggy S. Thompson, 90724TRA, Yukon.

Findings of fact: Respondent pled guilty to the felony of forgery and was incarcerated for 727 days; on application for answered "no" to question: "Have you ever been convicted of a felony."

Conclusions of law: Violations of 59 O.S. § 858-723(A)(1).

Order: Revoked. Revocation deferred 36 months and if no formal complaint filed by Board, complaint shall be dismissed.

Order 06-003, Eddie R. Peters 10577CGA, Pryor.

Agreed Consent Order. Findings of fact: See Order 06-004, below. Signed REA Form 8 accepting responsibility for trainee appraiser Francis Harper; assumed responsibility for appraisal of the subject of Order 06-004.

Conclusions of law: Violations of 59 O.S. § 858-723(A)(6), (7), and (13).

Order: Suspended 30 days.

Order 06-004, Francis Harper 90298TRA, Pryor.

Agreed Consent Order. Findings of fact: failure to identify and explain departures in limited appraisal, failure to identify intended use, incorrect reporting of factual data with respect to each of the three comps resulting in an incorrect estimate of value, failure to identify herself as trainee.

Conclusions of law: Violations of 59 O.S. § 858-723(a)(7), (8), and (9); § 858-723(a)(6): Conduct Section, Ethics Rule; Standard 1 and SR 1-1(a) and (c), 1-4(a); Standard 2 and SR 2-1(a) and 2-2(c)(ii), (v), and (xi); USPAP.

Order: Surrendered credential.

Order 06-005, Leo D. Hall 11526SLA, Tulsa.

Findings of fact: Respondent agreed to supervise trainees and signed REA Form 8; staff advised that he was not qualified to supervise; respondent did not reveal to trainees that he was not qualified and continued to supervise; respondent previously revoked for lying on application for licensure and subsequently reinstated by Board.

Conclusions of law: Violation of 59 O.S. § 858-723(A)(5), (13), and (9) by violating OAC 600:10-1-16(d); and § 858-732(A)(1).

Order: Revoked.

Order 06-006, Dennis D. Miller 10932CRA, Oklahoma City.

Action: Affidavit of voluntary surrender of appraiser credential in lieu of disciplinary action in settlement of Complaints no. 05-060, 071, 072, 073, 074, 075, 076, 077, 078, 079, 080, 086, 087, 100, 102 and 06-031.

Order: Voluntary surrender accepted by the Board.

DISCIPLINARY ACTIONS**Order 06-007, Donald W. Wilson 10612CGA, Claremore.**

Agreed Consent Order. Findings of fact: signing as supervisory appraiser and failing to adequately supervise an appraiser, Daniel D. Bunn. See Order 06-008, below.

Conclusions of law: None specifically stated in Order.

Order: 15 hours corrective education including 7 hours ANSI within 6 months, once completed, complaint to be dismissed.

Order 06-008, Daniel D. Bunn 12381CRA (then 12381SLA), Chelsea.

Agreed Consent Order. Findings of fact: improper calculation of GLA 2650 sf vs. 1898 sf, resulting in inflated estimate of value.

Conclusions of law: Violations of 59 O.S. § 858-723(a)(7), and (8); § 858-723(a)(6): Conduct and Management Sections, Ethics Rule; Competency Rule; Standard 1 and SR 1-1(a), (b), and (c); Standard 2 and SR 2-1, USPAP.

Order: Formal reprimand, completion of 60 hours corrective education courses to be approved by Board Director from sponsoring organization of the Appraisal Foundation w/in a year, failure to comply to result in immediate suspension without further Board action.

Order 06-009, Dan W. Montague 10438CRA, Enid.

Findings of fact: failed to comply with provisions of Order 06-001.

Conclusions of law: Violation of 59 O.S. § 858-723 A.5.

Order: Suspended 2 months.

NOTE: Presently on appeal in Garfield Co District Court.

Order 06-010, Devin R. Gordon 12408SLA, Tahlequah.

Findings of fact: inaccurate reporting in neighborhood section, incorrect reporting of physical attributes of subject property, incorrect figures in cost approach, inaccurate report of comp distances from subject, use of superior comps without adjustment, used only courthouse data and reported that he used MLS as source when he did not, did not visually inspect comps, intended to produce an opinion of value that was dishonest, fraudulent, and/or misrepresentative of true value of property.

Conclusions of law: Violation of 59 O.S. § 858-723(A)(5), (A)(7),(A)(8),(A)(9),(A)(10); § 858-723(A)(13) by violating § 858-732(A)(1); and § 858-723(A)(6) by violating Conduct and Management Sections, Ethics Rule; Competency Rule; Standard 1 and SR 1-1(a),(b), and (c); and Standard 2 and SR 2-1(a).

Order: Revoked.

NOTE: Presently on appeal in Cherokee Co District Court.

Order 06-011, Roger L. Smith 12083SLA, Oklahoma City and Kari B. Sloan 90669TRA, Guthrie.

Agreed Consent Order. Findings of fact: incomplete legal description; incorrect identification of owner and physical characteristics of subject property resulting in confusing, inaccurate and misleading report.

Conclusions of law: Violations of 59 O.S. § 858-723(a)(7), (8), (9), and (13); § 858-723(a)(6): Conduct Section, Ethics Rule; Competency Rule; Standard 1, SR 1-1(a), (c); Standard 2 and SR 2-1(a)&(b), USPAP; and § 858-732(A)(1).

Order: As to Smith: Public reprimand. As to Sloan, completion of 30 hour Principles course from sponsoring organization of the Appraisal Foundation w/in 90 days.

DISCIPLINARY ACTIONS

Order 06-012, Jerry L. Gill 10306CRA, Oklahoma City.

Findings of Fact: Respondent and Trainee Julian Harris prepared a report that had errors, omissions, inaccuracies and misrepresentations leading to a misleading and fraudulent report and artificially inflated value estimate. Left neighborhood for comps, used comps which were superior to subject without adjustment, improper cost approach figures.

Conclusions of law: Violation of 59 O.S. § 858-723(A)(6) by violating USPAP Conduct and Management Sections, Competency Rule, Standard 1 and SR 1-1(a),(b),(c), 1-2(a),(b), 1-2(e)(i),1-4(a),1-4(b)(i),(ii), 1-4(b)(iii), Standard 2, SR 2-1(a),(b), 2-2(b)(i),(ii),(iii),(ix), § 858-023(A)(7), (8), (9), (10), and § 858-723(A)(13) by violating § 858-732(A)(1).

Order: Suspended 60 days, forever barred from entering into trainee-supervisor relationships, 15 hour National USPAP Course.

Order 06-013, Julian L. Harris 90053TRA, Edmond.

Agreed Consent Order. **Findings of Fact:** See the findings in Order 06-012; also, use of signature of supervisory appraiser without authorization.

Conclusions of law: See the conclusions in Order 06-012; also, violation of § 858-723(A)(5) ...act or omission involving dishonesty, fraud, or misrepresentation...

Order: Suspended 3 years, must requalify under core curriculum, must provide proof of supervisory relationship and be supervised for 2 years, provide monthly logs for 2 years, work file true copies must be hand signed by supervisor and respondent, may not utilize electronic signature other than his own.

Order 06-014, Roger L. Smith 12083SLA, Oklahoma City and Gordon A. Cook then 90441TRA now 12193SLA, Oklahoma City.

Agreed Consent Order. **Findings of fact:** incomplete and misleading description of subject neighborhood, two comps that appeared to be flips without reporting or explanation, one comp that was actually the sale of two properties, one comp which had not sold at all and one comp in a superior neighborhood and included transfer of other real property not identified in the report. These and other errors resulted in a grossly inflated estimate of value.

Conclusions of law: Violations of 59 O.S. § 858-723(a)(7), (8), (9), and (13); § 858-723(a)(6): Conduct Section, Ethics Rule; Competency Rule; Standard 1, SR 1-1(a),(b),(c), 1-2(e)(1),(4); Standard 2 and SR 2-1(a)&(b), USPAP; and § 858-732(A)(1).

Order: As to Smith: 45 day suspension. As to Cook: 45 day suspension.

Order 06-015, Zachary W. Clark 90406TRA, Haskell.

Action: Affidavit of voluntary surrender of credential in lieu of disciplinary action in settlement of Complaint no. 05-130.

Order: Voluntary surrender accepted by the Board.

Order 06-016, Charles LaPorte 11487CGA, Hennessey.

Action: Affidavit of voluntary surrender of credential in lieu of disciplinary action in settlement of Complaint no. 04-012.

Order: Voluntary surrender accepted by the Board.

Order 06-017, Roger L. Smith 12083SLA, Oklahoma City.

Action: Affidavit of voluntary surrender of credential in lieu of disciplinary action in settlement of Complaint no. 05-059.

Order: Voluntary surrender accepted by the Board.

The Board staff continually receives questions from appraisers about the issues addressed in this article. We hope it will help you.

Reassigning and Readdressing Appraisals

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Being an appraisal professional often requires that we help our clients understand what we can and can not do for them, while still meeting our obligations to the Uniform Standards of Professional Practice (USPAP). In a sense, it requires appraisers to be educators.

A difficult aspect of being an educator, is explaining a concept in easy to understand terms, especially for the layperson. Below is a brief outline of what are often typical questions from many of our clients – It may be helpful to simply “clip and paste” this outline near your phone for the next time a client calls asking the same or similar questions!

I have an appraisal that I need “readdressed” or “reassigned”. Can an appraiser help me with this?

Yes, an appraiser can help – by performing a NEW assignment. An appraiser is not allowed to simply reassign or readdress an appraisal they previously completed for another client.

Why?

Appraisers are bound by the Uniform Standards of Professional Appraisal Practice (USPAP). These standards have specific definitions for “client” and a required “scope of work” which is unique to each assignment.

Because an appraiser is required to abide by USPAP they must identify the client at the outset of each assignment. If an assignment has already been completed, then the client can’t be “re-defined” or “re-named”, but an entire new assignment must ensue.

The appraiser must consider it as a new assignment to ensure they understand and meet the new client’s assignment parameters (which may differ from the original client’s). For the appraiser to do anything else, it would be asking them to violate these standards.

Will I have to pay a full appraisal fee for this “new assignment”?

Maybe, maybe not. The decision on the fee is a business decision between the appraiser and the “new” client and will likely depend on differences between the scope of the new assignment compared to the previous, i.e., are there different intended users? When was the previous appraisal completed? Is there a change in the effective date? Has the market changed since that effective date? Has new data become available for analysis which is pertinent and necessary to the assignment?

In order for the appraiser to answer the question on the fee, the new client must order the appraisal and communicate their needs to the appraiser and request a fee quote.

Ed. Note: For additional information, your attention is invited to the USPAP, AO 25, 26, 27, and 28, each of which bears on the above discussion.

FROM A BANK REVIEWER'S PERSPECTIVE...

By Lawrence T. Foley, IFAS, GAA
 First Citizens Bank / IronStone Bank
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As I review appraisals – both residential and commercial – it becomes more and more apparent that there are a number of areas where appraisers do not know the regulations or, I hate to believe, intentionally ignore them.

The larger banks have gone to centralized appraisal ordering. Medium sized banks are in the process of following the Regulators' requirements and are separating the lending and appraisal ordering functions. Smaller banks are likely to be doing the same in the not-too-distant future. This has been the trend for several reasons, not the least of which is a bank's need for quality control of the appraisal product. Centralization of appraisal ordering will result in banks reassessing their Approved Appraiser Lists. Appraisers who are not doing their jobs, those who are providing marginal products, are likely to end up with diminished business volume.

How many appraisers are aware of the Financial Institution Letters (FILs)? These Interagency Statements are published periodically and present the official position of The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA). The Letters address numerous banking related issues. Among other things, they address a number of appraisal related regulations and provide guidance to all appraisers, whether reviewers or practitioners in the field. (Go to www.fdic.gov and then search (upper right corner of the page) for *Financial Institution Letters*.)

Many Review Appraisers examine these FILs carefully. In conjunction with USPAP (and, yes, the Advisory Opinions) the FILs provide excellent guidance for the professional appraiser.

With these thoughts in mind, I would like to take a moment to outline just a few of the areas that seem to cause problems for appraisers...

First, remember these two regulations:

- A "regulated institution may not accept a borrower-ordered appraisal and may not allow the borrower to select an appraiser..."
- "A regulated institution cannot accept an appraisal that has been readdressed or altered by the appraiser with the intent to conceal that the original client was the borrower."

Please do not allow anyone to convince you to "readdress" an appraisal. It is prohibited under USPAP and could end up "coming back to bite you." The reality is that any federally regulated institution can accept - for review - an appraisal report prepared for any other federally regulated institution.

The second point I'd like to address is the three year history of the subject property. "USPAP Standards Rules 1-5(a) and (b) require an appraiser... to analyze (1) all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal and (2) all sales of the subject property that occurred within three (3) years prior to the effective date of the appraisal. USPAP Standards Rules 2-2(a)(viii), (b)(viii), and (c)(viii) call for the written appraisal report to contain sufficient information to indicate compliance with the sales history requirement; [these same Rules further require] that, if sales history is unobtainable, the written appraisal report must include a commentary on the efforts undertaken by the appraiser to obtain the information." (Excerpted from Advisory Opinion 1, page 113, USPAP effective July 1, 2006)

The bottom line is... you must provide a complete three year history of the subject property and include your analysis of any contract for sale or current listing of the subject property. As a financial institution, we also require the appraiser to discuss any significant difference between the appraised value and the contract price. In other words, if the contract is for \$500,000 and the appraiser concludes to a value of \$600,000 we would look for the appraiser to address the reason(s) for that difference.

Among commercial appraisers, there appear to be many different interpretations of what constitutes a summary report. If you want to think of a self-contained appraisal report as the novel, then the summary report is the "Readers Digest" version. However, in the summary report there must be sufficient information to lead any reader of the report to the same conclusion you, as the appraiser, have reached.

Residential appraisers often "hide behind" the various FNMA forms. Please remember that USPAP supersedes FNMA. For example, "FNMA does not require the Cost Approach" is a comment frequently seen on residential form reports. USPAP requires appraisers to develop a Cost Approach when that approach is necessary for credible assignment results. If a Cost Approach is not developed, it is incumbent on the appraiser to address the reasons for not developing it. Using FNMA as your excuse does not suffice.

From a Bank Reviewer's perspective, I would urge you to develop the Cost Approach whenever feasible. Many major lenders require that the Cost Approach be completed for all proposed, new, or "never occupied" single family residences. When the Cost Approach is developed, Reviewers look for land sales that support the land value conclusion to be included in the report. Many also look for land sales to support significant site value adjustments. If comparable land sales are not available, discuss the methodology used to estimate land value as well as the efforts undertaken to locate comparable sales.

Whether you're writing a narrative report or providing your appraisal report on a form, the rationale for not developing any of the three traditional approaches to value must be clearly explained in your appraisal report.

In general, commercial property appraisers tend to do a better job of explaining their thought processes because of the narrative format, but I would urge residential appraisers to not be afraid to write addenda. Write your reports to the requirements of the client with the most stringent appraisal or underwriting guidelines. Some clients may end up with more than they think they wanted, but I am confident this approach will significantly reduce the number of calls or e-mails you'll receive asking for additional information, and will likely have the added benefit of generating more appraisal orders. Lenders like using quality-oriented appraisers whose work product reduces their workload.

Be aware of the shortcomings of some of the FNMA forms. For instance, the land report form does not contain a section for providing the sales history. The fact that the form does not provide the space for this information does not excuse the appraiser from meeting the USPAP requirement.

In the first paragraph of the Preamble to the 2006 Edition of USPAP the statement is made, "... It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading." As a user of professional appraisal services in 15 states and the District of Columbia I would suggest to you that a "meaningful appraisal" is not something that just happens. It requires effort, it requires education, and it requires a desire on the part of professional appraisers to achieve excellence. May excellence be your worthy goal!

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