



March/April 2016

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From the Director

Spring is most definitely in the air and the Spring Caravan is just around the corner. Be sure to get registered! The course presenter is Len Elder. Len will cover the leading and most important court cases in the real estate industry plus you will also leave this course with a much better understanding of how consumers are engaging and hiring you today.

It's never too early to begin working on your continuing education requirements. Those of you renewing this year you just might want to be looking into how many hours you have completed so you know how many you need before the renewal deadline.

If you are a responsible broker or property manager, I'd like to remind you of that responsibility when it comes to trust accounting. If you delegate staff to carry out this task, when was the last time you actually reviewed the work being performed? Ultimately, it is your duty to make certain that all trust accounts are in order and balanced on a monthly basis. If you have any question about trust account requirements, please contact Commission staff.

I want to give a big thank you to the staff and members of the South Dakota Association of REALTORS® for the invitation to the Chili/Oyster Stew Feed.

I wish all of you a successful spring season!

Register NOW for the Spring Caravan

Presenter: Len Elder

Topic: *Justice Illustrated: Leading Court Cases That Affect Real Estate & The Way We Practice and The Virtual World: A Guide for Licensees to Protect & Promote Client Interests in a Virtual World*

CE Approval 6 hours Required

**Dates/Locations – Registration begins at 8:15 a.m.;
Class time 9 a.m. to 4 p.m.**

Monday, April 18 – Rapid City Rushmore Plaza Civic Center

Tuesday, April 19 – Pierre Red Rossa

Wednesday, April 20 – Aberdeen Ramkota

Thursday, April 21 – Sioux Falls Ramkota

Friday, April 22 – Sioux Falls Ramkota



This course will cover the leading and most important court cases in the real estate industry, as well as help licensees with regulatory compliance issues in using social media.

Registration forms have mailed out or licensees can log on to the SDREC website to register online or print the registration form.

Registration Fee: \$60 online or **POSTMARKED NO LATER than Wednesday, April 6;** \$70 after April 6 and on-site (The Commission will retain \$10 of any refunded registration.)

SDREC Spring and Fall Caravans to End after 2016

In May of 1960, then-Executive Secretary of the SDREC Jack Burchill, along with several commissioners, created an education course and delivered it around the state to licensees. In those days, education was voluntary, not mandatory. In the June 1960 newsletter, Burchill informed licensees of the decision to make the education offering an annual event. He wrote, "I can see no better way to professionalize the real estate industry in South Dakota than through education and co-operation with our fellow man". Simple words still true today.

This endeavor by the Commission to promote competence through education would evolve over the next few decades into what we know now as the "Caravan". For a lot of those years, licensees did not have sufficient access to classroom education and the education seminars offered by the Commission solved that challenge.

But times have certainly changed, and continuing education has emerged as an entire industry unto itself. Local instructors, professional associations and other organizations have stepped up their efforts to offer a variety of quality, affordable education options. With that, the time has come for the South Dakota Real Estate Commission to take a step back and allow the private sector to provide this service.

At the March 17 meeting, the Commission voted unanimously that it will no longer offer the education caravans after 2016. During a lengthy discussion, the pros and cons of the commission-sponsored education were very seriously considered. Declining attendance numbers, increasing costs, better utilization of staff time, impact of online education and, most importantly, the outstanding efforts of other classroom education providers were the primary reasons that factored into this decision.

For those licensees used to completing their education requirements entirely by attending the caravans, it will be particularly important to become familiar with the Commission website to look for other approved education courses. The lists of approved classroom and distance learning courses are available 24/7 – these lists are continuously updated as new courses get approved. **It is strongly advised that licensees check these lists OFTEN to see what upcoming courses are available.**

The Spring 2016 Caravan is already scheduled – registration for this course is OPEN! There will be a Fall 2016 Caravan, with dates and topic to be determined. This will give everyone time to prepare for and seek out alternative course offerings, beginning in 2017.

Author Frank Herbert once said, "There is no real ending. It's just the place where you stop the story." The caravan has been an important chapter in the SDREC story.

2016 Real Estate Legislation from Around the Country – used with permission from ARELLO

Here's a sampling of pending and/or or recently enacted 2016 legislation in other states -

Teams: According to legislative records, Nebraska LB 678 would officially recognize real estate teams in the Nebraska Real Estate License Act. The bill would define "team" and "team leader" and create supervisory responsibilities for team leaders. The bill resulted from a joint task force between the Nebraska Real Estate Commission and the Nebraska REALTORS® Association. It is anticipated that, if the bill passes, future Commission rules and regulations will further define team responsibilities.

Radon: Colorado HB 16-1141 would require the Colorado Department of Public Health and Environment to develop a statewide educational program for the public, real estate brokers, and builders about radon gas including health risks, testing options, and mitigation techniques. The bill would also provide low-income financial assistance for residential radon mitigation.

Property Condition Disclosures: Maryland 1508 would add information about home improvements made during a seller's period of ownership to existing disclosure requirements; Oklahoma HB 2304 would require sellers to disclose owners association restrictions, covenants, etc. affecting a property.

Disciplinary Actions

The following actions by the Commission have become effective since the last report in the newsletter. A **Consent Agreement and Order** is an admission of violation and voluntary acceptance of the terms determined by the Commission in lieu of a formal hearing.

Citations/Consent Agreements. The Commission established the Citation Program to diminish the number of license law violations, decrease time required to bring licensees into compliance and to recover costs involved when action is required.

The following individuals and/or firms have been issued citations. Each licensee/company has agreed to a Consent Agreement. Each Consent Agreement will include no less than a \$100.00 penalty and a specified time to comply with the requirement.

Failure to register a place of business or failure to report a change of location of a business within 10 days of the change (SDCL 36-21A-52)

Jeffrey Garrett, Spearfish
Michelle Watson, Spearfish

Sandra Spencer, Rapid City

Performing real estate brokerage activity beyond the month in which a license lapses for non-payment of renewal fees, and/or not filing/completing the required continuing education (SDCL 36-21A-61, 36-21A-62, 36-21A-64):

Jennifer Anderson, Sioux Falls
Bruce Bowden, Black Hawk
Mike Dressler, Sioux Falls
Gary Goeller, Huron
Denise Johnson, Black Hawk
Daniel Koupal, Dante
Dillon Lambley, Herrick
Janelyn Maguire, Kennebec
Christine Muse, Custer
Eugene Nachtigal, Hot Springs
Staci Ruiz, Aberdeen
Shasta Weston, Sioux Falls

Melanie Bobby, Aberdeen
Toni Devereux, Hot Springs
Matt Gehling, Preston, MN
Reynaldo Gonzales, Brandon
Gale Johnson, Rapid City
Dean Krogman, Brookings
Kelly Lhotak, Rapid City
Jennifer Mettler, Brookings
Adam Mutschelknaus, Sioux Falls
Melvin Pieper, Gary
James C Smith, Watertown
Benjamin White, Sioux Falls

Failure to maintain errors and omissions insurance or to provide proper notification to the commission of errors and omissions insurance (SDCL 36-21A-119, ARSD 20:69:15:02, 20:69:15:06, 20:69:15:07):

Jim Aesoph, Watertown
Virginia Brinkman, Yankton
Charlie Even, Watertown
Denise Hanzlik, Dell Rapids
Julie Herman, Rapid City
Reed Johnson, Sioux Falls
Jeremy Madsen, Sioux Falls
Samuel Ogdie, Sioux Falls
Kyle Peschong, Mitchell
Sacha Picotte, Sioux Falls
Ryan Rients, Sioux Falls
Larry Schecher, Rapid City
Tyler Stunes, Sioux Falls
Karri Swenson, Chamberlain
Stephanie Wehrkamp, Sioux Falls

Brenda Aesoph, Watertown
Godofredo (Freddie) Contreras, Sioux Falls
Clay Fisher, Sioux Falls
Erin Hardy, Sioux Falls
Vicky Johns, Madison
Matt Larson, Luverne, MN
Carrie Mart, Vermillion
April Pedersen, Sioux Falls
William E Phillips, Sturgis
Susan Raposa, Rapid City
Roger Riley, Spearfish
Tom Simmons, Jr., Sioux Falls
Stan Sudbeck, Yankton
Gene Voelsch, Watertown

Commission Calendar

March 25 – SDREC office closed at Noon, Good Friday

April 18-22 – Spring Education Caravan

May 11-12 – Commission Meeting, Pierre

New Licenses

Broker Associate

Bertrand, Craig M – Sioux Falls
Christensen, Duane D – Sioux Falls
Goar, Joseph C – Watertown
Hoftiezer, Lucas – Watertown
Howe, William W – Brandon
Johnson, Jake R – Lead
Krause, Jennifer L – Marion
Larson, Tilmer J – Lead
Marshall, Destinie R – Sioux Falls
Rensink, David – Sioux Falls
Solum, Noel A – Watertown
Walter, Ida L – Rapid City
Williams, Gabriel J – Sioux Falls

Bobby, Tara L – Aberdeen
Deutsch, Craig A – Wilmot
Halberstadt, Sadie C – Sioux Falls
Holsather, Glen A – Sioux Falls
Jacobsen, Zach – Sioux Falls
Jurgens, Tyler A – Rapid City
Kuhlman, Heather C – Watertown
Littau, Curtis L – Winner
Ohayon, Rebecca M – Sioux Falls
Skavlem, Andrea L – Rapid City
Stormo, Nicholas M – Hayti
Werpy, Megan R – Pierre

Salesperson

Bircher, Aaron J – Whiting, IA
Paskey, Robert W – Sioux City, IA
Troendle, Mason J – Storm Lake, IA

Lanni, Luciana – Hudson, WI
Poole, Heather M – Sioux City, IA

Residential Rental Agent

Baedke, Aaron – Vermillion
Dowd, Patrick J – Brandon
Fuller, Jamie – Harrisburg
Hasner, Orvie J – Vermillion
Leif, Kim – Elk Point
Olson, Eva M – Elk Point
Swanson, Laurie L – Mobridge

DeKay, Bryson D – Sioux Falls
Frey, Laura L – Spearfish
Hasner, Janet G – Vermillion
Jensen, LeeAnn – Rapid City
Nowlin, Patrick C – Rapid City
Studer, Michelle – Mitchell
Wright, Lindsey A – Sioux Falls

Property Manager

Jensen, Richard L – Rapid City
Sterling, Dawn R – Rapid City

Niklason, Lori A – Brookings

Registered Home Inspector

Culver, David – Spearfish
Erion, Ronald D – Spearfish
Jeffcoat, Jr., James J – Harrisburg
Shabino, Brian C – Sioux Falls
Wermager, Kevin R – Spearfish

Erion, Andrew J – Spearfish
Gjerde, Roy A – Vienna
Kenaston, Matthew J – Rapid City
Wahl, Jamie J – Harrisburg
White, Brady E – Sioux Falls

Auctioneer

Schlagel, Terry – Clark

Timeshare Agent

Dargatz, Michael - Keystone

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Appraiser Update

New Licensees – January/February 2016

Matthew T. Pullen, State-Registered – Brookings, SD
Darcy Sabers, State-Registered – Mitchell, SD
Matthew D. Ansay, State-Certified General – Centennial, CO
Jordan R. Tucker, State-Registered – Sioux Falls, SD
Robert Van Laer, State-Certified General – New York, NY
Nikole L. Crawley, State-Certified Residential – Maitland, FL
Sara Olson, State-Certified General – Fort Collins, CO

Upgrades – December 2015

Jeffrey Ballard, State-Licensed – Sioux Falls, SD
Dustan Waaraniemi – State-Certified General – Barnsville, MN

Review of Cases

For the period January 1, 2015 through December 31, 2015, the Department has opened 19 cases – seven complaint investigations, eight upgrades, and four new applicants claiming experience.

Complaints – Four pending, three closed.

Upgrade – Eight closed.

New With Experience – Four closed.

For the period January 1, 2016 through March 15, 2016, the Department has opened three cases – one complaint investigation, and two upgrades.

Complaint – One pending.

Upgrade – Two pending.

New AMC Registrations Issued December/January/February

Market Valuation Services, LLC – Cumming, GA
Land Gorilla, LLC – San Luis Obispo, CA
SingleSource Property Solutions, LLC – Cannonsburg, PA
Valuation Management Group, LLC – Marietta, GA

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Labor and Regulation, Appraiser Certification Program, 308 South Pierre Street, Pierre, South Dakota 57501 or e-mail: <mailto:sherry.bren@state.sd.us>. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action includes but may not be limited to denial, suspension, censure, reprimand, or revocation of a certification by the department. (ARSD 20:14:11:03)

“Did You Know?” Questions by South Dakota Licensees

Question: I performed work for Bank A. Now Bank A has merged with Bank B.

I am presuming that all my projects completed under Bank A will now be part of Bank B, and any work I performed for Bank A will transfer to Bank B. I have been requested to send Bank B a report that I performed for Bank A. When banks merge or are acquired, do the appraisal reports just flow across?

Response from The Appraisal Foundation’s Director of Appraisal Issues: Despite the fact that two financial institutions are merging, the appraiser’s client remains whichever financial institution originally engaged him in an appraisal assignment. If the appraiser is contacted by the “other” financial institution, he is still bound by the Confidentiality section of the ETHICS RULE in USPAP, which precludes communication of assignment results and confidential information (both, as defined in USPAP) without the permission of his original client.

Appraisers are sometimes requested to “change” the name of the client on completed appraisal reports, including situations where a loan may be in progress at the time of a merger. The appraiser may receive documentation regarding the merger of the two entities. In such cases, the appraiser should determine whether or not he or she can proceed without violating USPAP. It’s possible that the appraiser may need to consult an attorney to make such a determination.

Question: I have an assignment for a 2-4 unit appraisal on a 1025 form, however, the client wants it to be an “exterior only” inspection. All of the 1025 forms are pre-printed with, “I did an interior and exterior inspection”. The client said to include their comments, which were provided to me, in the report and it will keep me in compliance with USPAP. It feels misleading, so I want to check to see if adding their conversion verbiage is acceptable for South Dakota and that there will not be any issues with USPAP.

Response from The Appraisal Foundation’s Director of Appraisal Issues: Generally speaking, if there is preprinted verbiage in an appraisal report form but an appraiser includes his or her own verbiage that contradicts it, there is the possibility that the resulting report may be misleading and in violation of Standards Rule 2-1 in USPAP. This is because no matter how the appraiser tries to clarify what part of the report should “take precedence,” an intended user still may not understand.

There certainly may be other forms available in the marketplace that are better suited for this assignment. The appraiser may want to check with the software provider to see what they may be able to offer.

USPAP Q&A December 22, 2016

2016-2017 USPAP

2016-01: ETHICS RULE – CONFIDENTIALITY

Are Physical Characteristics Confidential?

Question: I am aware that the ASB changed the definition of assignment results to specify that physical characteristics are not assignment results. Does this mean that physical characteristics are not confidential?

2016-02: ETHICS RULE – CONFIDENTIALITY

Physical Characteristics or Assignment Results?

USPAP Q&A – continued

Question: I read an appraisal report that included the paragraph below regarding the subject property's improvements. The paragraph appears to include both a description of the physical characteristics, as well as the appraiser's opinion (i.e., assignment results). I would like clarification on which items are physical characteristics and which are assignment results.

The subject property is located at 245 Broad Street. The improvements were constructed in 1985 and were renovated in 2010 with all new appliances, bathroom fixtures, and heat/AC. The house, however, has functional problems. There are two bedrooms on the second floor with no bathroom on that floor. The interior décor is dated, and some of the walls are pink, yellow, and purple.

2016-03: ETHICS RULE – CONFIDENTIALITY

Physical Characteristics or Assignment Results – Residential Real Property Example

Question: I am trying to distinguish between physical characteristics and assignment results in a residential appraisal assignment. Which of the following ten terms are physical characteristics and which are assignment results?

1. Living area is 2,000 SF
2. Property is in good condition
3. The property has functional problems
4. The improvements were constructed in 2005
5. The carpet is new
6. 2nd floor has 2 bedrooms, no baths
7. Well landscaped
8. Poor floor plan
9. Carpet needs replacing
10. Walls are painted pink, yellow, and purple

2016-04: ETHICS RULE – CONFIDENTIALITY

Physical Characteristics or Assignment Results – Non-Residential Real Property Example

Question: I am trying to distinguish between physical characteristics and assignment results in a non-residential appraisal assignment. Which of the following ten terms are physical characteristics and which are assignment results?

1. Building contains 10,316 SF
2. There is a low land to building ratio
3. The mechanicals are in fair condition
4. The heat/AC equipment is 20 years old
5. Parking access is poor
6. There is 2,000 SF of mezzanine office space
7. There are 4 parking spaces per 1,000 SF of office area
8. The warehouse ceiling height is 14 feet
9. The building has functional problems
10. The building is Class A construction according to Marshall & Swift description

2016-05: ETHICS RULE – CONFIDENTIALITY

Physical Characteristics or Assignment Results – Machinery and Equipment Example

Question: I recently completed a personal property appraisal of a group of machinery and equipment. My client was the business owner and the intended use was to appeal the tax value established by the local assessor. My client provided a copy of the appraisal to the local assessor. I was authorized by my client to share information with the assessor about his machinery and equipment but I was not authorized to share any assignment results.

USPAP Q&A – continued

The assessor sent me a list of questions via email. Which questions can I answer without violating the Confidentiality section of the ETHICS RULE by disclosing assignment results or confidential information?

2016-06: ETHICS RULE – CONFIDENTIALITY

Physical Characteristics or Assignment Results – Fine Art Example

Question: Last year I appraised a painting that was subsequently sold by an auction house. My client was the owner of the painting. A fellow appraiser, which is now appraising a similar painting by the same artist, recently contacted me. This other appraiser is using the painting I appraised as a comparable example and has asked me several questions about the physical condition.

I would like to help this colleague but want to be sure that I am not violating the Confidentiality section of the ETHICS RULE. My client did not request that I keep the condition report prepared by the auction house confidential, and I still have it in my workfile.

May I share the auction house condition report?

2016-07: ETHICS RULE – CONFIDENTIALITY

What are “Reasonable Steps”?

Question: USPAP now requires that an appraiser “take reasonable steps to safeguard access to confidential information.” What are reasonable steps?

[Answers to these questions may be found at The Appraisal Foundation’s website – www.appraisalfoundation.org.