



May/June 2016

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From the Director

The spring rain has made everything so green and lush. I'm sure am enjoying planting my garden and flower pots.

It's never too early to begin working on your continuing education requirements. Those of you renewing this year might want to go to the "Licensee Only" section of the Commission's website to check on your continuing education. Please remember that the last Caravan is this fall.

At our recent meeting, the Commission elected new officers for the coming year. I would like to thank Dave Bonde as he wraps up his year as Commission Chair and look forward to working with newly-elected Chairperson Ryan Wordeman. Ken Cotton has assumed the Vice-Chair position.

Responsible brokers — keep in mind that the compliance officers will be reviewing your internal controls during your next audit. Remember, the trust account is your responsibility and you need to make sure that whoever reconciles your trust account is doing it correctly. Also, be prepared for license renewals — not just your license but those associated with you, as well. It's a good idea to have a meeting with your associates that are up for renewal to see where they are at in the renewal process. Perhaps with your encouragement, the procrastinators will complete their education prior to the renewal deadline.

Broker associates are advised to refrain from any misleading advertising of team names and the omission of the entire brokerage name. Responsible brokers are advised to keep an eye on their licensees' teams and their advertising to ensure that the public is not misled and that the identity of the brokerage clear and legible.

In closing, I would like to take this opportunity to thank Karen Callahan for her duties as the Education Director. Karen has decided to take another position within the Department of Labor and Regulation. Her last day with the Commission is May 23. While I will miss Karen and have fond memories of working with her, I wish her well. Her loyalty and work ethic have been an inspiration to us all and she will truly be missed.

On that note, I would also like to welcome Beth Marnell as our new Education Director. Beth's first day will be May 24 and she is already working on getting up to speed with real estate regulation. You can read more information about her in this newsletter. Welcome Beth!

I wish you all a safe and enjoyable Memorial Day!

Commission Calendar/Fall Caravan Dates

Monday, May 30 – Commission office closed for Memorial Day Holiday

Wednesday-Thursday, July 13-14 – Commission Meeting, Pierre

Monday, September 26 – Fall Education Caravan – Sioux Falls Ramkota

Tuesday, September 27 – Fall Education Caravan – Aberdeen Ramkota

Wednesday, September 28 – Fall Education Caravan – Pierre Ramkota

Thursday, September 29 – Fall Education Caravan – Rapid City Rushmore Plaza Civic Ctr.

Meet Beth Marnell, New SDREC Education Director



My name is Beth Marnell and I am the new Education Director for the Real Estate Commission as of May 24. I began working for the state in the University of South Dakota's Housing office in 2011 before moving to Pierre to take a position with the Cosmetology Commission. Since then, I have strived to improve my skills and broaden my knowledge of regulation. I come with a background of working with national test companies, reviewing compliance, and researching new changes in an ever-changing industry. I look forward to this new opportunity and to bring a new perspective of how we can better serve the public and our licensees.

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.

Jason Miller, Sioux Falls, Broker Associate. Consent Agreement. Violation of 36-21A-28, 36-21A-61, 36-21A-66 and 36-21A-71(1) for performing real estate brokerage activity beyond the month in which the license lapsed for non-payment of renewal fees. Administrative fine of \$100.

Amy Evans, Sioux Falls, Broker Associate. Consent Agreement. Violation of 36-21A-71(1), and 36-21A-52 for failure to register a new place of business or change of business location within ten days. Administrative fine of \$100.

Raymond Daley, Rapid City, Broker Associate. Consent Agreement. Violation of 36-21A-71(1), and 36-21A-52 for failure to register a new place of business or change of business location within ten days. Administrative fine of \$100.

Reynoldo Gonzales, Brandon, Broker. Consent Agreement. Violation of 36-21A-71(1), and 36-21A-52 for failure to register a new place of business or change of business location within ten days. Administrative fine of \$100.

HUD Announces Consent Order Resolving Sexual Harassment Case Against SD Property Manager

Editor's Note: Although HUD refers to Respondent as a Property Manager, the Respondent is the owner, and not a licensee with the SDREC.

WASHINGTON – The U.S. Dept. of Housing and Urban Development (HUD) announced that it has settled a Fair Housing Act suit against a SD property manager. The Consent Order resolves a claim that the property manager sexually harassed a female tenant

The Consent Order was entered by a HUD administrative law judge on April 8, 2016. Respondents Carrol Goodsell, a SD property manager, and his company, Goodsell General Contracting, LLC, admitted no liability in agreeing to the settlement. Under the terms of the agreement, respondents will pay \$24,600 to the female complainant and her family, including her two children and her boyfriend. Respondents also agreed to utilize a third-party to interact with tenants, attend fair housing training, and adopt and distribute a written policy against sexual harassment to current and future tenants.

HUD Warns Against Criminal History-Based Discrimination (used with permission from ARELLO)

The U.S. Dept. of Housing and Urban Development, Office of General Counsel, has issued new guidance warning landlords, property managers and other housing providers against making arbitrary and overbroad criminal history-based housing decisions that may result in Fair Housing Act liability.

Criminal History-Based Discrimination (cont.)

In the recent guidance document HUD acknowledges that the existence of a criminal record is not a protected characteristic under the Fair Housing Act; which prohibits discrimination in the sale, rental, or financing of dwellings on the basis of race, color, religion, sex, disability, familial status or national origin. However, HUD says, “Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population. Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.” And, HUD concludes, such restrictions on housing opportunities “...violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another.”

The guidance explains that criminal history-based discrimination will be analyzed according to the “disparate impact” test under which Fair Housing Act violations are weighed. That is, “...where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of... [a] protected class, such policy or practice is unlawful... if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.” [Citing *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 192 L. Ed. 2d 514. See also, 24 C.F.R. 100.500].

HUD notes that some landlords and property managers have asserted resident safety and property protection as reasons for denying housing to those with criminal histories. HUD recognizes that such concerns may be legitimate, but says that housing providers must be able to prove that such denials actually serve those purposes. For example, bald generalizations or stereotypes, such as the assertion that all persons who have a criminal record pose greater risks than those who do not, are insufficient to establish a housing provider’s “substantial, legitimate nondiscriminatory interest”. HUD also says that housing denials based on one or more prior arrests, without any conviction, are insufficient because arrest records do not constitute proof of unlawful conduct, are often incomplete and are not reliable for assessing potential risks. And, a “blanket” prohibition against providing housing to persons with a conviction record “no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since” is unlikely to meet the “substantial, legitimate nondiscriminatory interest” test. HUD notes that housing providers may tailor their policies and decisions to exclude individuals with only certain types of convictions, but only if they distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property, and criminal conduct that does not. The HUD Guidance notes an exception in section 807(b)(4) of the Fair Housing Act [42 U.S.C 3607], which does not prohibit housing discrimination based on a conviction of, but not an arrest for, the illegal manufacture or distribution of certain federally controlled substances.

Even if criminal history-based housing decisions are supported by a “substantial, legitimate, nondiscriminatory interest”, Fair Housing Act claimants or HUD may show that such interests could be served by another practice that has a less discriminatory effect. This consideration requires a case-by-case analysis, but HUD says that a housing provider’s assessment of relevant mitigating information is likely to have a less discriminatory effect than categorical exclusions; such as the facts or circumstances underlying the conviction, the age of the individual at the time, a prior good tenant history, and evidence of rehabilitation efforts. Also, HUD says that housing providers might minimize the costs of such assessments by delaying consideration of a criminal history until an individual’s financial and other qualifications are verified.

The guidance document concludes with an explanation and examples of obvious forms of prohibited intentional discrimination based on criminal histories. This occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic and the use of criminal records or information is a pretext for unequal treatment.

New Licenses

Auctioneer

McCloud, Samuel R – Hoven
Stormo, Nicholas M - Hayti

McCloud, Shane T – Doland

Broker Associate

Anderson, Shannon L – Rapid City
Bergman, Jessica – Tea
Buhl, Kim J – Pierre
Gath, Dalton M – Luverne, MN
Gross, Sarah – Harrisburg
Hendricks, Jonathan – Lead
Huet, William J – Sioux Falls
Kroger, Chelsea – Sioux Falls
Legg, Shannon L – Watertown
McDowall, Brian J – Russellville, AR
Oshanick, Courtney A – Sturgis
Pieper, James B – Watertown
Preheim, Shane W – Sioux Falls
Smith, Brent C – Aurora
Thomas, Trista K – Sioux Falls
Van Roekel, Nathan – Sioux Falls
Viergets, Nicholas L – Spearfish
Webb, Jonathan D – Aberdeen
Williams, Courtney T – Rapid City
Zomer, Dale E – Sioux Falls

Azinger, Robert Patrick – Hot Springs
Bormann, Jason G – Sioux Falls
Elsasser, Jacob G – Rapid City
Giedd, Shawn D – Alcester
Heath, Stephen J – Watertown
Holt, Kimberly M – Piedmont
Jacobsen, Daniel J – Piedmont
Laughlin, Michelle E – Vermillion
Maltaverne, Marcia – Tea
Nielsen, Lorna K – Brookings
Parkhurst, Ruth A – Sioux Falls
Pratt, Jason D – Rapid City
Robataille, Angie J – Spearfish
Stanko, Catherine I – Rapid City
Tobin Tupa, Emily – Rapid City
Vickers, Nicholle – Rapid City
Ward, Jill – Yankton
Weir, Jenna J – Sioux Falls
Woolsey, Lori A – Rapid City

Broker

Broll, David W – Hutchinson, MN
Hogue, Tina M – Black Hawk

Frerichs, Adam E – Akron, IA

Salesperson

Pfaffle, Kathryn A – Sioux City, IA

Residential Rental Agent

Diedrich, Amy K – Brookings

Newman, Jerry L – Rapid City

Property Manager

Bortnem, Beth A – Brookings
Dodge, Lorilee A – Sioux Falls
Lee, James M - Estelline

Carlton, Nancy L – Canton
Kagarmanov, Michelle T – Rapid City

Home Inspector

McCarty, Lori A – Spearfish
Solberg, Dale M – Sioux Falls

Mudlin, Sam A – Piedmont

Timeshare Agent

Bilyeu, Braden L – Rapid City

Dent, Aimee J – Rapid City

Appraiser Update

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New Licensees – March/April 2016

Brett A. Matzek, State-Certified General – Chicago, IL
Michael J. Lillibridge, State-Certified General – Bloomington, MN
David Edwards, State-Certified General – Lees Summit, MO
Jordan G. Bauer, State-Registered – Sioux Falls, SD
Christopher G. Theissen, State-Licensed – Bloomington, MN
John W. Sapp, State-Registered – Brandon, SD
Tad S. Marinac, State-Certified General – Edina, MN
Jamie P. Rich, State-Certified General – New York, NY

Upgrades

Crystal Freund, State-Certified Residential – Yankton, SD
Frederick Preator, State-Certified General – Harrisburg, SD
Jaret Sievers, State-Certified General – Sioux Falls, SD

Review of Cases

For the period January 1, 2016 through May 10, 2016, the Department has opened six cases – one complaint investigation, five upgrades, and no new applicants claiming experience.

Complaints – One pending.

Upgrades – Three pending, two closed.

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: 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)

New AMC Registration Issued April - 2016

Home Base Appraisal Management, LLC – Sandy, UT.

USPAP Q&A February 10, 2016

2016-2017 USPAP

2016-08: APPRAISAL DEVELOPMENT – SCOPE OF WORK ISSUES

Is Turnaround Time an Assignment Condition?

Question: My state's appraiser regulatory agency sent out a newsletter that says a due date is an *assignment condition*, and that failing to adhere is a violation of USPAP. Is this true?

USPAP Q&A (cont.)

Response: Assignment due dates are contractual obligations, but are not assignment conditions under USPAP. Turnaround times and similar items are business practice issues, and are outside the scope of USPAP.

Assignment conditions are addressed in the Problem Identification section of the SCOPE OF WORK RULE (Lines 421-425). The Rule states in part:

Assignment conditions include assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work. Laws include constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or order, having legal force, issued by an administrative agency.

However, an appraiser failing to comply with contractual obligations could potentially be subject to civil penalties.

USPAP Q&A March 17, 2016

2016-09: USPAP COMPOSITION, STRUCTURE, AND COMPLIANCE

Public Trust

Question: The expression “public trust” is used in USPAP. What is public trust and who or what is the public in the USPAP context?

Response: USPAP mentions public trust three times. The PREAMBLE states that the purpose of USPAP is to “... promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers.” The PREAMBLE also states “The appraiser’s responsibility is to protect the overall public trust and it is the importance of the role of the appraiser that places ethical obligations on those who serve in this capacity.” Lastly, the ETHICS RULE reinforces this concept with “An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.”

While USPAP does not define public trust, it is clear from the context that it refers to the need for the public to be able to have confidence that services provided by an appraiser are performed competently and in a manner that is independent, impartial, and objective.

The public, whose trust the appraiser must promote and preserve, exists on several levels. The most direct is the appraiser’s client. In addition to the client, any additional intended users would be part of the appraiser’s public. But, even beyond the client and other intended users, there are other parties who may rely on the work of an appraiser and the appraiser must be careful not to mislead such third parties. Finally, it could be said that the general public is also part of that public. If the general public cannot depend on appraisers to act as independent professionals and provide credible results, the economy could suffer.

Revision – 2015-12: APPRAISAL DEVELOPMENT – SCOPE OF WORK ISSUES (*revised 3/17/2016*)

Appraising Two Lots as One

Question: I have a lender client that wants a market value appraisal completed. The property consists of two separate legal lots. The highest and best use for each of these lots is as a separate one-unit residential site. However, the client wants them appraised as though they were one legal lot. The intended use is for mortgage lending purposes.

USPAP Q&A - March 17, 2016 (cont.)

May this assignment be completed treating these two lots as if they were one legal lot with the highest and best use as one legal lot?

Response: ~~If the appraiser knows that the highest and best use of the properties is as two separate one-unit residential sites, then~~ Yes. However, complying with the lender's request will require use of a hypothetical condition. If the client is a federally regulated financial institution, ~~it will~~ the client may also need an "as-is" appraisal.

If the appraisal were based on a hypothetical condition (i.e., market value of the subject as if it were a single lot), and if necessary for credible results, the appraiser would have to develop an opinion of highest and best use of the hypothetical parcel. If this leads to the conclusion that the highest and best use would be subdivision into two or more lots, the appraiser must perform the appraisal recognizing that potential use and may need to perform a subdivision analysis to reach a credible opinion of the highest and best use of the hypothetical parcel.

Appraiser Qualifications Board Q&A

Vol. 7, No. 2 – December 2015

FINAL COURSE EXAMINATIONS AND PROCTORING

Question: I am a state regulator responsible for approving distance education courses for qualifying education purposes. Can an education provider utilize a remote proctoring service to electronically monitor an individual taking a final examination?

Response: the Real Property Appraiser Qualification criteria specifies a proctor must be "an official approved by the college or university or by the sponsoring organization" that delivers the course. The AQB's Course Approval Program (CAP) Policies and Procedures (which is a voluntary program that may be utilized by state regulatory agencies) states that proctoring an examination could "take many forms including but not limited to the physical presence of a proctor, video observation or electronic monitoring." It is important to note that the AQB does not maintain a list of acceptable proctors.

EXPERIENCE REQUIREMENTS

Question: The Certified General credential requires 3,000 hours of experience *in no fewer than 30 months*. In the type of appraisals I perform, some assignments may be commenced in one month and completed in another; thus, the log might not reflect "experience" in one or more specific months. Does my log of appraisal experience have to show appraisal completed in 30 different months? Or does it just have to span a total of 30 months?

Response: The *Real Property Appraiser Qualification Criteria* does not require that experience be obtained in 30 different months, but rather over a period of no fewer than 30 months. However, state regulatory agencies can be more restrictive, therefore it is recommended to check with your state for details.