

## South Dakota Real Estate

### Commission

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### South Dakota Appraiser Certification Program

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## Summer 2017 Edition

### From The Director

I hope you all are enjoying your summer!

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 your continuing education to verify that your course sponsors reported your attendance.

I'd like to remind the responsible brokers and property managers to make sure reconciliations of your trust accounts are being performed monthly. It's very easy for the Commission compliance officers to determine that monthly reconciliations have not been performed, especially if the reconciliations have not included individual ledger totals. If you need to freshen up on your trust accounting skills, please go to the Commission's website where you will find trust account guidelines and the trust account reconciliation form.

Effective July 1st, the Commission will be under the leadership of Ken Cotton who will be taking the gavel from Ryan Wordeman. Mark Wahlstrom will serve as vice-chair. It's been a pleasure working with Commissioner Wordeman as chair and Commissioner Cotton as vice-chair and I look forward to working with the new leadership.

I would like to congratulate Commissioner Ryan Wordeman and Dave Bonde who were recently reappointed by Governor Daugaard to serve another 3-year term. I assure you that all the Commission members take their appointments seriously and are dedicated to the mission of the Commission.

Have a wonderful 4<sup>th</sup> of July!

### Real Estate Commission Calendar

**Monday, July 3rd**– The Real Estate Commission office will be closed

**Tuesday, July 4th**– The Real Estate Commission office will be closed in honor of Independence Day

**Wednesday, July 12th**– Real Estate Commission meeting in Pierre

**Monday, September 4th**– The Real Estate Commission office will be closed in honor of Labor Day

**Wednesday & Thursday, September 6th-7th**– Real Estate Commission meeting in Pierre

## Reminder to Pre-License & Continuing Education Providers

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- Education providers and course sponsors must submit their course schedule to SDREC prior to a course being given. This can be sent by email to Beth.Marnell@state.sd.us. Be sure to send any updates for course dates as well!
- Course applications and fees must be received by the SDREC office at least 20 days prior to the course. **No exceptions.**
- Course providers are responsible for reporting attendee lists to the SEREC office within 10 days of the course completion. This list must include the course name and approval number, date, location, and names of licensees.

## Is It Confidential?

The SDREC office has received several inquiries recently about confidentiality and whether something is considered confidential or not. In order to determine if something is considered confidential we first must look at what the definition of confidential information is. SDCL 36-21A-127 defines confidential information as ‘any information given to the licensee in confidence, or any information obtained by the licensee that the licensee knows a reasonable individual would want to keep confidential, unless disclosure of the information is authorized in writing by the client or disclosure of this information is required by law or the information becomes public knowledge. The term, confidential information, does not include material facts about the physical condition of the property.’

We have also had inquiries about the length of time required to keep information confidential. As stated in SDCL 36-21A-150 ‘unless otherwise provided in the agreement or by law, no broker and licensee associated with that broker engaged as a seller's/landlord's or buyer's/tenant's agent, subagent, limited agent, or transaction broker owes any further duty or obligation to a client or customer after termination, expiration, completion, or performance of the agency or brokerage agreement, except for the following duties: (1) Accounting for all moneys and property related to and received during the engagement; and (2) Keeping confidential all information received during the course of the engagement.’

If you question if something is confidential you should discuss this with your broker. If you are still unsure please contact the SDREC office.

## Scam Updates: Real Estate Schemes Continue to Target Consumers, Licensees (Used with permission from ARELLO)

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Here's a sampling of the latest real estate related schemes that *Boundaries* has been tracking lately. Some are new, some are familiar, and some have been repackaged, but they all pose a threat to consumers, licensees and other industry stakeholders.

**The "Florida Board of Realtors" Letter:** The problem? *There is no "Florida Board of Realtors"*. Members of the legitimate state Realtor® association, officially known as "Florida Realtors®", have been receiving phony "Final Notice" bills in the mail from the fictitious "Board". The bill demands payment of \$225, on pain of "closure of board listing" and loss of inclusion "in the Agency listing". The letter also recites state laws requiring licensees to report criminal convictions, and even asks questions about prior administrative sanctions, court rulings, or "REALTORS License" sanctions. Florida Realtors® says that complaints have come in from all parts of the state. CEO Bill Martin commented, "It's a scam. And it's not a simple scam. High-tech criminals put a great deal of work and planning into this." The letter also shows a working URL for a website that appears legitimate, at least at first glance, but whose links don't work or lead nowhere. The letter has been sent only to Florida licensees and only by mail, so far.

**Phony Disciplinary Complaint/"Phishing" Scam:** The Colorado Division of Real Estate and Board of Real Estate Appraisers have warned that cybercriminals are sending emails to appraisers indicating that a complaint has been filed against them. The emails describe an investigative process and recite a requirement that the licensee reply in seven days or face regulatory consequences. The email "creates anxiety", so the reader opens the link in the email and inadvertently downloads malicious code that creates an "open lane" to the appraiser's computer. The warning explains how the legitimate appraiser complaint process works, and also directs appraisers to [staysafeonline.org](http://staysafeonline.org) to learn more about how to protect against email "phishing" attacks. This type of scam also has been aimed at real estate agents, lawyers and other regulated professionals in many jurisdictions.

**Appraiser Identity Theft:** The Office of Inspector General (OIG) at the U.S. Department of Housing and Urban Development (HUD) has issued a Fraud Alert reporting identity theft schemes that resulted from the use of appraisers' state certification numbers. In most of the cases, a Federal Housing Administration (FHA) roster appraiser gave their desktop appraisal software PIN to colleagues or supervisors to meet deadlines, or when the roster appraisers were unavailable. For example, in Washington, reverse mortgage loan appraisals were performed by the former boss of an FHA roster appraiser, who used the appraiser's PIN. The appraisal report(s) used the roster appraiser's name but listed the phone and appraisal company of the former boss. In Illinois, a licensed appraiser used the name and license numbers of two other appraisers with whom he worked to sign off on appraisals used in fraudulent real estate transactions. And, a California appraiser fraudulently used the identity, name, and credentials of an FHA roster appraiser 170 times. The FHA removed the name from the roster after a staff review appraiser noted inconsistencies. But the phony appraiser wrote a letter to the appraisal company, purportedly from HUD, explaining why the appraiser's name wasn't listed

## Scams (Cont.)

and stating that the firm could continue to let him do appraisals. While criminal penalties were imposed in the cases, the OIG says that appraiser identity theft often comes to light by accident and, even if the perpetrators are caught, the innocent appraiser's reputation can be hard to repair. The Fraud Alert provides a list of do's and don'ts to help avoid the scam.

**Update: Timeshare Resale Impersonation Is Spreading:** An article in the **February edition** of *Boundaries* described the latest iteration of the familiar timeshare resale scam, which popped up in Oregon and Colorado and involves the use of legitimate real estate licensee and company names in aid of the subterfuge. Some also have created legitimate-looking websites with working links to regulatory agencies, and/or phony websites for "neutral third party" escrow companies that will supposedly hold any payments in the promised transaction. Now, the **Minnesota Department of Commerce** says the timeshare resale impersonation scam has spread "throughout the country" and that scammers have turned to using legitimate names because consumers are becoming "savvier" about financial decisions. The Department says that consumers should never pay upfront fees or send money by means with little or no recourse (wire transfers, money orders, cashier's checks) or provide personal/financial information over the phone to a reseller. Consumers should also be wary of overeager buyers, avoid offers that are too good to be true, and "do some homework" by checking the reseller's contact information on the Internet and contacting the timeshare resort where the unit is located to see if they have any information about the reseller.

**The Moving Scam:** With the spring residential home buying/selling season underway in many markets, it seems timely to note that the Canadian Association of Movers (CAM) has warned consumers about "Brand Hijackings". CAM says that an increasing number of complaints are being received about rogue businesses representing themselves as reputable moving companies. Consumers think that they have hired a brand-name company, but another company shows up on moving day and the consumer usually has no choice but to proceed. According to CAM, the experience usually ends up with the consumer's goods being held hostage for more money, delivery delays, and lost or damaged possessions. Perpetrators' methods include using reputable brand names in Internet advertising ("brand hijacking") and using business names that are very similar to well-known companies. Consumers are urged to check out a prospective mover's reputation with CAM; verify company logos, identifiers or affiliations; avoid online quotes or booking through websites that only provide a telephone number (it may be a company operating under several names); and check the company with the local Better Business Bureau.

## Disciplinary Action

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

**Cheri St. Pierre, Broker Associate, Piedmont. Consent Agreement.** Violation of SDCL: 36-21A-72 for failure to adhere to advertising guidelines. Administrative fine of \$100.00.

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## New Licensees

### Broker

Crisp, Douglas A Sundance  
Green, Kevin M Hastings  
Hatch, Casey J Lansing  
Joerger, Paul J Sioux Falls  
Joerger, Tamara J Sioux Falls

### Broker Associate

Ahlemeier, Curt C Sioux Falls  
Anders, Baxter B Rapid City  
Atkins, Craig C Tea  
Bertolotto, Elizabeth Sturgis  
Borchard, Janet M Sioux Falls  
Brue, Jon D Rapid City  
Carey, Carrie Sioux Falls  
Coyle, Lesley L Spearfish  
Cuff, Jennifer L Sturgis  
Dardis, Courtney M Davis  
Deneui, Melissa M Sioux Falls  
Erb, Mike Sioux Falls  
Fox, Michael D Hartford  
Fullmer, Nick Aberdeen  
Geise, Steve B Rapid City  
Groeneveld, Jessica Brandon  
Groeneveld, Tim Brandon  
Hallock, Martin J Fort Pierre  
Hansen, Amber Rapid City  
Hansen, Garner Harrisburg  
Hansen, Lori A Colman  
Heidebrink, Jason D Hot Springs  
Heidrich, Kate L Rapid City  
Hennessey, McKenzie S Belle Fourche  
Hoekstra, Keith Sioux Falls  
Hoffmann, Amber Box Elder  
Hopkins, Maria A Sioux Falls  
Husby, Deb A Sioux Falls  
Irvine, Todd Tea

Leary, Mary E Howard  
Meier, Susan M Sioux Falls  
Mickelson, George M Sioux Falls  
Schneider, Christopher B Rocky River  
Toscana, Anthony M Gillette  
Zeigler Wehrkamp, Judith K Sioux Falls

Johnson, Jeff D Tuthill  
Jones, Julie A Madison  
Konkol, Jena M Brookings  
Krumm, Miranda S Chester  
Larson, Bradly L Spearfish  
Larson, Manya Rapid City  
Leach, Scott R Douglas  
Lockhart, Sherri C Custer  
London, Bonnie S Pierre  
Lucht, Lisa M Yankton  
Mallinger, John L Hartford  
McBride, Shonna M Rapid City  
McCauley, Donna M Rapid City  
McGregor, Kelly Piedmont  
McKnight, Charity J Sioux Falls  
Meehan, Bradley M Warner  
Merchant, Justin Sioux Falls  
Messelhiser, Justin A Brandon  
Meyer, Erik A Sioux Falls  
Miller, Michael Black Hawk  
Moore, Ashlie Sioux Falls  
Munce, Tracy Sioux Falls  
Nelson, Daryl L Britton  
Noecker, Tom P Yankton  
Oakes, Arthur G Keystone  
Painter, Lori A Sioux Falls  
Plooster, Gina M Rapid City

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## New Licensees (Cont.)

### **Broker Associate**

Portillo, Tara L Yankton

Pruitt, Erin L Sioux Falls

Riley, Minna M Black Hawk

Rudland, Ariel R Piedmont

Sandness, Bo T Sioux Falls

Senftner, Matt J Rapid City

Smith, Jessica L Rapid City

Sperber, Kelsey M Sioux Falls

Sperber, Kelsey M Sioux Falls

Stoltenberg, Matthew B Rapid City

Strom, Cody F Tea

Sutton, Jared D Flandreau

Tidwell, Julie S Box Elder

Tschetter, Sarah J Rapid City

West, Sandra M Dickinson

Wingert, Laura T Sioux Falls

Wollman, Stephanie K Sioux Falls

### **Property Manager**

Anderson, Crystal J Brookings

Balynas, Stephanie Circle Pines

Butler, Cody J Brookings

Christie, David C Belle Fourche

Gesinger, Bonnie White River

Hanson, Misha L Sioux Falls

Munce, Angela A Tea

Roers, Kent J Independence

Simpson, Trey Sioux Falls

Vanderweide, Shannon Sioux Falls

Wall, Timothy J Aberdeen

### **Req. Home Inspector**

Foley, Miles M Belle Fourche

Fravel, Kevin M Spearfish

Nettinga, Stacy Mitchell

Wentz, Bradley R Rapid City

### **Salesperson**

Andrews, Dustin M Johnson

Claypool, Marceta Le Mars

Meyer, Brooke A Anthon

Vander Vorste, Daniel W Minot

### **Timeshare Agent**

Batten, Wayne D Lead

Duininck, Samuel M Rapid City

McDowell, Matthew M Rapid City

Palese, Frank D Lead

Palese, Gary L Lead

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# Appraiser Update

## New Licensees – March 2017 through May 2017

Darrell K. Farley, State-Certified General – Chicago, IL  
Stephen T. Frazier, State-Licensed – Little Elm, TX  
Eric G. Johnson, State-Registered – Sioux Falls, SD  
Garrett T. Petrik, State-Registered – Spearfish, SD  
Jeffrey J. Davis, State-Registered – Brookings, SD  
Kathy L. Quinlivan, State-Registered – Yankton, SD  
Calvin G. Conroy, State-Registered – Rapid City, SD  
Elizabeth C. Taylor, State-Registered – Watertown, SD  
Giselle B. Nguyen, State-Certified General – Los Angeles, CA  
Martin M. Lantinen, State-Certified General – Bloomington, MN  
Donald D. Zacher, State-Registered – Belle Fourche, SD  
Brad E. Hayes, State-Certified General – Clive, IA  
Matthew A. Hummel, State-Certified General – Merriam, KS  
Gerald V. Rasmussen, State-Certified General – Stamford, CT

## Upgrades – October 2016 through February 2017

Barbara Hegerfeld, State-Certified General – Sioux Falls, SD

## Review of Cases 2016

For the period January 1, 2016 through December 31, 2016, the Department opened eighteen cases – eight investigations, nine upgrades and 1 new applicant.

Investigations – Five closed and three pending.

Upgrades – Eight issued and one agreed disposition.

New Applicant – One pending

## Review of Cases January 1 2017 through May 16 2017

For the period January 1, 2017 through May 16, 2017, the Department opened four investigation cases and one upgrade case.

Investigations – Two pending and two closed.

Upgrades – One pending.

## 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](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)

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## New AMC Registrations Issued – March 2017 through May 2017

eValuation ZONE, Inc., Chicago, Illinois  
Service 1<sup>st</sup> Valuation and Settlement Company, Pittsburg, Pennsylvania  
PropertyRate, LLC, Orange, California

### Appraisers—2017 Renewal

**NOTICE!** The 2017 appraiser renewal application packets will be mailed the first week in July. The applications are due in the Appraiser Certification Program office by August 17, 2017 for renewal of certificates for state-certified general, state-certified residential, state licensed and state-registered appraisers.

In order to renew your certificate, you must submit the completed application, applicable renewal fees and verification of the required 28 hours of approved continuing education which includes the 2016-2017 Edition of the 7-hour National Uniform Standards of Professional Appraisal Practice Update Course (USPAP Update). Appraisers are required to complete the 2016-2017 USPAP Update prior to June 30, 2016. If the USPAP Update was not completed by June 30, 2016, there will be a \$100 administrative penalty fee assessed.

[Continuing Education Reporting Period – October 1, 2015 through September 30, 2017]

### Supervising Appraisers—2017 Renewal

**NOTICE!** The 2017 supervisory appraiser endorsement renewal applications will be mailed the first week in July. The applications are due in the Appraiser Certification Program office by August 17, 2017 for renewal of the supervisory appraiser endorsement.

#### Continuing Education Requirements Duplication Not Allowed

An applicant for renewal may not receive credit for completion of the same continuing education offering within an appraiser's continuing education reporting period. [ARSD 20:14:13:01]

#### Continuing Education Not Required

Continuing education is not required if an appraiser's certificate was issued on or after March 30, 2017. This applies to new applicants only and not to applicants that have been issued an upgrade of a license or certificate. [ARSD 20:14:13:01.01(1)]

#### Partial Continuing Education Requirement

An appraiser is only required to complete fourteen (14) hours of continuing education if the appraiser's certificate was issued on or after October 1, 2016 and prior to March 30, 2017. This applies to new applicants only and not to applicants that have been issued an upgrade of a license or certificate. [ARSD 20:14:13:01.02]

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## **Gut Check – Beware reliance language that can substantially increase liability risk** By Peter T. Christensen, LIA **Administrators & Insurance Services' General Counsel**

*Re-printed with the permission of the Appraisal Institute/The Q1 Issue of the Appraisal Institute's Valuation Magazine*

Earlier this year, a national bank notified appraisers bidding for commercial assignments that they would have to include a wordy new “reliance” provision in their reports. Some appraisers were taken aback by the language. A few, guided by their instinct for self-preservation, decided against accepting work for the bank. Their gut told them – correctly – that the language substantially increased their liability risk.

The bank’s requested reliance language, which I’ve shortened here, included the following:

In connection with a proposed extension of credit in the form of (or a proposed investment in) a loan, debt issuance or other financing and secured ... by the real property (“Property”) which is the subject of this report (“Report”), or by pledges of direct or indirect ownership interests in the Property owner ... (in any such case, the “Financing”), or the proposed issuance of any securities and secured or otherwise backed ... by the Property or the Financing (the “Securities”), this Report, and the information contained therein, may be used and relied upon by the addressee(s) of this Report, their affiliates, successors and assigns, and:

- (a) [Bank], as Administrative Agent for the benefit of any lenders, from time to time, party to the Financing;
- (b) any actual or prospective purchaser of, or investor in, the Financing (or any portion thereof or interest therein by way of participation, syndication or otherwise);
- (c) any actual or prospective financing source for any such purchaser or investor;
- (d) any servicer of the Financing or the Securities;
- (e) any trustee of the Financing or the Securities;
- (f) any rating agency actually or prospectively rating the Financing or the Securities;
- (g) any underwriter of, or placement agent for, the Financing or the Securities;
- (h) any institutional provider of any liquidity facility or credit support for the Financing or the Securities;
- (i) the respective affiliates of each entity referenced in clauses (a)-(g) above;
- (j) the respective officers, directors, employees, agents, advisors and counsel of each person or entity referenced in clauses (a)-(i) above; and
- (k) the respective successors and assigns of each person or entity referenced in clauses (a) through (i) above.

This Report has no other purpose and should not be relied upon by any other person or entity.

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## Gut Check (Cont.)

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The bank's reliance language is a variation of provisions required by many clients engaged in securitizing or syndicating commercial and multifamily property loans. It is commercially reasonable to expect that financial institutions underwriting such loans would need to provide appraisals to purchasers of or investors in the loans and that, to some extent, these parties downstream from the appraiser's client need to be able to use and rely on the appraiser's work product. That is part of the business value of appraisal services.

At the same time, it's important that appraisers and their clients recognize the liability ramifications. The primary risk posed by the bank's language and similar provisions is that the appraiser is opening the door wide for any of the enumerated parties to have standing to bring a professional negligence and/or negligent misrepresentation claim against the appraiser. Under most states' court-made common law, a professional – such as an appraiser – has potential liability to the parties that the professional knows will use or rely on the professional's work, or reasonably expects will do so. Accordingly, any party listed in the bank's reliance language could be in a position to pursue legal claims against the appraiser if a party contends it suffered harm resulting from a deficient valuation. This risk may or may not be acceptable to an appraiser, but the appraiser should, at least, be cognizant of it. Is the risk balanced by an acceptable fee?

Appraisers also should evaluate the details of proposed reliance language. The bank's language in this case, frankly, is sloppy for the bank's apparent purpose of securitizing loans, and exposes appraisers to risks beyond those necessary to the bank's own business. Lawsuits against appraisers often involve parties and transactions that the appraisers or clients never contemplated. The bank's language here could expose an appraiser to claims by parties that don't have a connection to financing arranged by the bank. For example, if this bank decided not to extend financing, the report could be picked up by another lender – perhaps a hard-money lender – with or without the appraiser's knowledge. If that hard-money lender or its investors made a loan and claimed to suffer a loss, they too could argue that the loose reliance language gave them a basis for relying on the report. Beyond that, it's conceivable that legal counsel for a borrower (or guarantor of the borrower's loan) might try twisting the language to support their own claims.

Accordingly, in this real-life example, a couple of appraisers wrote back to the bank and requested that the bank allow them to (a) clarify that the reliance language only applies to the proposed debt-based financing by the bank for which the appraisal was performed, and (b) include the following clarification at the end of the provision to eliminate potential misinterpretation:

Under no circumstances shall any of the following parties be construed as a person or entity referenced in clauses (a) through (k) above or otherwise be entitled to use or rely on the appraisal or this Report: (i) the borrower(s) on the Financing, (ii) any guarantor(s) of the Financing, or (iii) principals, shareholders, investors, members or partners in such borrower(s) or guarantor(s).

To its credit, the bank listened to the appraisers and agreed to the change. The change, of course, still doesn't eliminate a great deal of the risk that flows from

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## Gut Check (Cont.)

reliance language. To do that, appraisers would need to consider adding provisions to the engagement agreement and reports that might limit the appraisers' liability to parties other than the client, or place a time limitation on claims.

## Announcing – Frequently Asked Questions (FAQs) Regarding Allegation of Non-Compliance, Investigation, and Complaint

Effective September 20, 2016, Chapter 20:14:11 of the administrative rules was revised to establish allegation of non-compliance as the first step for initiation of an investigation to determine if there is sufficient evidence for a formal complaint to be entered against a licensee by the secretary, remove the term “anonymous complaint” and replace it with “allegation of non-compliance”, and describe the criteria an allegation of non-compliance must meet in order for an investigation to be initiated.

The Department of Labor and Regulation, Appraiser Certification Program engaged a Workgroup to develop a detailed set of relevant questions concerning the Department's procedures for allegations, investigations, and complaints consistent with the newly implemented rules. The members of the Workgroup are:

Matt Van Zee, Independent Banker (Advisory Council)

Scott Kopplin, Independent Fee Appraiser (Advisory Council)

Amy Frink, Independent Fee Appraiser

Adam Lalim, Independent Fee Appraiser (Advisory Council)

Terry Leibel, Independent Fee Appraiser (SD Chapter of the ASFMRA President)

David Lawrence, Independent Fee Appraiser (USPAP Compliance Review Examiner)

Sandra Gresh, Independent Fee Appraiser (PAASD President)

The Workgroup developed thirty-two (32) questions, with corresponding answers. The FAQs may be found at [http://dlr.sd.gov/appraisers/appraiser\\_faq\\_allegation.aspx](http://dlr.sd.gov/appraisers/appraiser_faq_allegation.aspx).

The Department extends a special 'thank you' to the members of the Workgroup for their contribution of time to meet with Program staff for a brainstorming session in Pierre to develop the questions and their sincere commitment to promote understanding of the enforcement process and provide guidance to appraiser credential holders, the public, and users of appraisal services.