From the SDREC Director, Melissa Miller

Congrats to Matthew Krogman on being appointed to the Commission! We look forward to the knowledge he brings to the Commission. We are indeed fortunate to have such a strong Commission in place. Doug Nelson and Paula Lewis are very experienced brokers and provide a wealth of knowledge to the Commission. In addition, Dennis Eisnach and Mark Whalstrom both have a wealth of knowledge and do an exceptional job with their responsibilities as public members. I assure you that all the Commission members take their appointments seriously and are dedicated to the mission of the Commission.

The Commission's Specialized Real Estate Advisory Group met in June to discuss and review commercial brokerage forms. The first priority is a Commercial Listing Agreement, Commercial Leasing Agreement and a Commercial Purchase Agreement.

An issue to be reminded of is that of changing broker affiliation or moving an entire office. These changes must be filed in the Commission office within 10 days of transfer. Failure to do so can immediately result in a Stipulation and Assurance of Voluntary Compliance and payment of a $50 penalty.

Even though we're at the beginning of summer, fall will be here before we know it. If your license renews at the end of this year, be sure to start scheduling courses. By completing the necessary education early, you won't have to worry about the availability of courses as the renewal deadline draws near.

Have a wonderful summer!
**Commission Actions**

The following actions by the Commission have become effective since the last report in the newsletter. A **Stipulation and Assurance of Voluntary Compliance** is a settlement agreement between licensees and the Real Estate Commission and constitutes neither an admission nor a denial of any violation. 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. A suspension held “in abeyance” is one where the Commission has set aside the suspension provided the licensee comply with all of the other terms of the agreement.

**Michael D. Johnson, Box Elder, Broker Associate.** Consent agreement. Violation of 36-21A-71(6) for pleading guilty to a Class 4 felony - one count of possession, manufacturing, or distributing child pornography. Revocation of license; Mr. Johnson shall not re-apply for licensure for a period of five years.

**Betty Dockter, Milbank, Broker.** Consent agreement. Violation of 36-21A-147 for failure to present the Real Estate Relationship Disclosure to the client at the first substantive contact. Suspension of license for one year, of which all will be held in abeyance provided all terms of the consent agreement are met; completion of the 15-hour Responsible Broker course and six hours in Contracts.

**Terry Haiar, Alexandria, Auctioneer.** Consent agreement. Violation of 36-21A-71(1), (30), and (32) and 36-21A-132 (2) for failing to exercise reasonable skill and care for his clients by selling a property at absolute auction when there was no mention in the Agreement of “absolute” and for allowing the sellers to bid on the property. Penalty of $1000, no violations for one year, and completion of 6 hour course in auctioneering.

**Clifford Sherard, Alexandria, Broker.** Consent agreement. Violation of 36-21A-71(1) & (5), 36-21A-80, 36-21A-82 and 36-21A-132 (4) for failure to maintain and monthly reconcile a trust account ledger and check register and spending earnest money on advertisement for the auction of the subject property. Penalty of $500, no violations for one year, and completion of the 15-hour Responsible Broker course.

**Stephanie Dannen, Rapid City, Broker Associate.** Stipulation and assurance of voluntary compliance. Failure to complete education requirements of previous stipulation agreement. Penalty of $724 and costs of $276.

**Joel Willette, Watertown, Broker Associate.** Stipulation and assurance of voluntary compliance. Alleged violation of 36-21A-71 (22) for failure to make certain all terms and conditions of the transaction are included in the offer to purchase; alleged violation of 36-21A-71 (32) acts constituting bad faith, incompetency or fraudulent dealings by indicating the seller’s property condition disclosure statement was not provided due to a short sale transaction; alleged violation of 36-21A-71(33) using a licensee’s position to gain undue influence over a prospective buyer by influencing the client’s signature despite the lack of proper understanding of the documents presented; alleged violation of 36-21A-140 for not having the client sign a lead-based paint disclosure. Costs of $3131.84 and completion of six hours of Contracts, six hours of Agency and three hours in Short Sales.
News From the Sioux Falls HUD Office

New Bed Bug Notice
In April 2012, HUD released Housing Notice 2012-5 “Guidelines on Addressing Infestation in HUD-insured and Assisted Multifamily Housing.” This notice supersedes Housing Notice 2011-20. The notice provides updated information to prevent and address infestations including, but not limited to bed bugs, insects, and all pests. The notice provides guidance to owners, management agents and residents of HUD Multifamily insured and assisted properties to remind all parties of the importance of prevention, identification, and treatment of infestations in HUD-assisted and insured housing. The notice also provides information and references to best practices regarding the prevention and control of infestations. It also reaffirms existing program requirements with regard to infestations. For more information, read Notice 2012-5 on HUD's website.

Pre-foreclosure Webinar
FHA recently announced the Pre-foreclosure Program (PFS) Webinar Training for Real Estate Professionals on August 2, 2012 from 1:00-3:00 p.m. Central Time (CT). The program allows a borrower in default to sell their home and use the proceeds to satisfy the mortgage debt, even if the proceeds are less than the amount owed. Training and technical assistance will ensure that all partners are provided with current information on HUD programs and resources available to reduce foreclosures while fostering an environment that promotes successful implementation of HUD policy and industry best practices. The webinar is designed for real estate professionals, but is open to all industry participants. To register for this free event, sign up at here. (This webinar is NOT approved for real estate continuing education, but offers excellent information on HUD programs.)

Fall Caravan Save the Date
The dates for the Fall Education Caravan have been set. Marie Spodek will be the featured speaker with the topic to be determined. Look for topic and registration information in the August/September issue of the newsletter. SDREC will be offering online registration!

October 10 - Spearfish Holiday Inn
October 11 - Rapid City Hilton Garden Inn
October 12 - Pierre Red Rossa/Clubhouse Inn
October 15 - Watertown Ramkota and Convention Center
October 16 - Aberdeen Ramkota and Convention Center
October 17 - Sioux Falls Hilton Garden Inn
October 18 - Sioux Falls Hilton Garden Inn
What's Next from the CFPB? - Used with permission from ARELLO

Since its official launch in July 2012, the Consumer Financial Protection Bureau (CFPB) has assumed regulatory authority over a very broad range of consumer financial products and services, many of which initiatives directly or indirectly impact real estate regulators, licensees and the real estate industry. Here’s a brief overview of what’s coming next from the CFPB.

**Combined Mortgage Loan, Settlement Statement Disclosures**

Jurisdictions whose licensing laws hold real estate licensees accountable for the accuracy of transaction closing/settlement statements may want to be aware of the CFPB’s soon-to-be-released combined mortgage application and closing disclosure forms. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), the CFPB has until July 21, 2012 to initiate formal rulemaking proceedings that will combine the current federally-required disclosures that consumers receive: (1) during the mortgage application phase of a real estate transaction (the early Truth In Lending Act [TILA] disclosure and the Real Estate Settlement Procedures Act [RESPA] Good Faith Estimate [GFE]); and (2) at or before closing (the final, corrected TILA disclosure and the HUD-1 Settlement Statement). The CFPB’s proposed final rules are also expected to, among other things, limit lender extensions of the early-phase disclosure deadline, extend the settlement statement delivery deadline from one to three days before closing and tighten existing “tolerance” rules that allow mortgage loan costs to vary between the application phase and the closing. The CFPB is also considering whether lenders, settlement agents, or perhaps both, should be responsibility for delivery of the integrated settlement disclosure(s) to consumers. Publication of the proposed final forms and rules is reportedly imminent.

**Mortgage Loan Originator Qualification and Screening**

The CFPB says that under state laws, the federal Secure and Fair Enforcement Act (SAFE) and requirements promulgated by various federal agencies, loan originators currently have to meet different sets of qualification requirements that depend on whether they work for a bank, thrift, mortgage brokerage or nonprofit organization. The CFPB is considering Dodd-Frank based rules that would “level the playing field” for different types of loan originators through character and fitness screening requirements, criminal background checks and ongoing training that will apply to all originators and ensure that they possess the knowledge necessary for the types of loans that they originate.

The CFPB’s 37-page Outline of Proposals Under Consideration explains the intricacies of the preliminary rulemaking proposals, their basis and legal authority and how they relate to Dodd-Frank and other existing federal laws and regulations. The CFPB hopes to formally propose the rules this summer and finalize them by January 2013.

**Mortgage Originator Compensation**

The CFPB is also seeking input about proposed rules that are intended to simplify mortgage points and fees and bring greater transparency to the mortgage loan origination market. Among other things, the rules will generally reaffirm existing U.S. Federal Reserve Board regulations that: (1) prohibit MLO payments based on loan terms and conditions, except for payments that consumers make directly to MLOs; and (2) where the consumer directly pays the MLO, prohibit the MLO from also receiving compensation from any other party. The CFPB’s rules, however, will implement Dodd-Frank provisions that contain new or different MLO compensation requirements. For example, the Federal Reserve rules allow consumers to pay upfront points and fees, but the Dodd-Frank Act generally prohibits the practice where an MLO is being compensated by the creditor.
or brokerage firm. However, the CFPB is currently considering how to apply its authority to create exemptions from those prohibitions, under certain circumstances. The CFPB is also considering proposals that would:

• Require “bona fide” discount points, meaning that consumers would receive a minimum reduction of the interest rate in return for paying the point;
• Require lenders to offer a no-discount-point option in order to enable homebuyers to better compare competing and often confusing offers from lenders; and
• Ban origination charges that vary with the size of the loan. Because “origination points” are easily confused with “discount points”, brokerage firms and creditors would only be allowed to charge flat origination fees.

New Licensees

**Broker Associate**
Amdahl, Leanne – Flandreau
Baum Crawford, Sharon – Sioux Falls
Block, Douglas J – Watertown
Bludorn, Kelan J – Brookings
Boy, Michele G – Valley Springs
Byrd, Diane K – Rapid City
Chenoweth, Michelle L – Huron
Frybarger, Michael R – Rapid City
Green, Jolene M – Springfield
Grosz, Brett D – Rapid City
Hampton, Jillian R – Yankton
Helma, Christa F – Freeman
Holt, Tim – Rapid City
Isaak, Lee M – Aberdeen
Jackson, Karla A – Sioux Falls
Jaeger, Mark L – Aberdeen
Lambley, Dillon D – Burke
Lindholm, Nikki L – Tea
Lorenzen, Stacy A – Sioux Falls
Munger, Lane J – Custer
Parks-Howie, Kelli L – Rapid City
Patrick, Katherine K – Sioux Falls
Petersen, Michael R – Sioux Falls
Petersen, Patrice A – Sioux Falls
Rambo, Traci K – Haleiwa, HI
Reiter, Jill R – Sioux Falls
Weis, Joseph P – Tea

**Broker**
Holmstrom, Roger – Farmington, IL
Loftus, Kevin J – Vermillion
Meierhenry, Jane L – Sioux City, IA
Pearman, Grant W – Cedaredge, CO
Richards, Bret P – Frisco, TX

**Property Manager**
Hensley, Erin Leigh – Rapid City
Hensley, Mary L – Rapid City
Kattenberg, Derek A – Hull, IA

**Res. Rental Agent**
Barklind, Kathryn J – Sioux City, IA
Carlson, Melanie K – Spearfish
Ehlers, Christine L – Pierre
Green, Joseph D – Garretson
Lawrenson, Wendy R – Mount Vernon
Pastian, Sarah H – Sioux Falls
Scott, Brenda F – Eagle Butte
Welbig, Dorothy – Sioux Falls

**Salesperson**
Pech-Williams, Tiffany – Hinton, IA

**Registered Home Inspector**
APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Labor and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program.

New Licensees – April/May 2012

Scott K. Falkum, State-Certified General – Minneapolis, MN
Robert A. Schreel, State-Certified Residential – San Diego, CA
Michael D. Craven, State-Registered – Rapid City, SD
Timothy J. McGuire, State-Certified General – Holstein, IA

Appraisers - 2012 Renewal

The 2012 appraiser renewal applications will be mailed the first week in July. In order to renew your certificate for state-certified general, state-certified residential, state-licensed and state-registered appraiser, you must submit the completed application and applicable renewal fees by August 17, 2012. The National Registry fee has been increased to $40.

2013 Renewal - Appraisers are required to complete the 2012-2013 Edition of the 7-hour National Uniform Standards of Professional Appraisal Practice (USPAP) Update Course during the period of January 1, 2012 through June 30, 2012. The certificate of completion is to be submitted with your 2013 renewal application. Do not submit verification of completion of the course during this renewal period. If the course is not completed by June 30, 2012 the applicant for the 2013 renewal period will be assessed a $100 administrative penalty fee.
Disciplinary Action Information

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, SD 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 may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))


For the period January 1, 2012 through June 5, 2012, the Department has received four upgrade applications and initiated six complaint investigations.

Upgrades – Four upgrades pending.
Complaints – Two complaint consent agreements executed and four complaints pending.

Frequent Flyers

Maybe last year or even a few months ago you were in for a settlement conference before a Board member and a Department attorney. You admitted to boiler plating huge sections of your report. You acknowledged rookie errors and crazy omissions. Sheepishly, you took your medicine about cutting corners and making a general mess of that last appraisal. The board members were convinced by your sincerity and offered you private remediation through additional course work instead of a public discipline such as a fine or suspension.

Now you’re back. What to do with you now?

Appraiser regulators have what we euphemistically refer to as, frequent flyers. Frequent flyers are licensees whose names are well-known to the Department and especially the Board.

Why? Because they are the subject of multiple complaints that may span years. How are frequent flyers born?

Kenny began appraising in 2000. He’s a Certified Residential appraiser out on his own. His first complaint came in 2003 and involved boilerplate errors and a flawed Cost Approach on a cookie-cutter house in a garden-variety subdivision. He was brought in for a settlement conference and was given an education sanction. No public discipline.

In 2005 another complaint comes in. This time, Kenny makes a mess of a condominium appraisal. More boilerplate. Wrong zoning. Missed sales. Unsupported adjustments. He’s brought in again. This time, the Board recommends an AWL (Administrative Warning Letter) with a fee of $500. Kenny agrees to the terms and promises never to be back before the
Board. Again, not a public discipline.

In 2009, Kenny doesn’t complete his 28 hours of CE. This time, he gets a fine and a brief suspension. He makes up the deficient courses and sits idle for seven weeks.

In 2011, a lender looking to fulfill their Dodd-Frank Mandatory Reporting obligations rolls in four reports. One is from 2008, one is from 2010 and two are from 2005.

A quick look at the 2005 reports reveals that they were written after his first settlement conference and contained more boilerplate, wring zone, missed sales and unsupported adjustments. We have no choice but to close the 2005 cases as they have exceeded the five-year Illinois statute of limitations.

Kenny ends up suspended for a long stretch and has to pay a big fine in early 2012.

Out in the profession, appraisers grumble amongst themselves that the state should have gotten rid of Kenny back in 2005. They all seem to know that Kenny’s reputation is to make numbers and to do a careless job.

So, was it a lenient Board that gave Kenny too many chances? Maybe it was the fault of the lender who was sitting on Kenny’s bad appraisals for six years. Maybe there are other lenders who’ve been sitting on his reports for years but just decided that it was easier to blacklist him quietly. Perhaps it was the fault of all those grumbling appraisers who’ve actually reviewed Kenny’s work over the years…but never saw fit to turn any of them into the state.

In any case, this is how a frequent flyer is born and is able to practice for years. We don’t like it any more than you. But think of it this way: If you had appeared before the Board back in 2005 based upon what was found in that single report, would you want a chance to become a better appraiser…or should you have been fined, revoked or suspended?

If you do end up in a settlement conference before the Board, try to make certain that it’s a one-way flight.

**Full Court Pressure**

*(Article by Peter Christensen in Valuation – Fourth Quarter Reprinted with permission by the Appraisal Institute)*

Several recent lawsuits could significantly affect appraiser liability.

In recent years, Australian “valuers” have paid as much as 7 percent of their gross revenue for professional liability insurance – about 10 times higher than most U.S. appraisers pay. From this side of the equator, it appears their situation stems from appraisals essentially being treated as guarantees of value for lenders, mortgage insurers and borrowers. Fortunately, U.S. appraisers aren’t facing that kind of crisis, but there are a number of cases working their way through the courts that warrant attention.
The cases discussed here highlight significant liability issues and potential financial ramifications that appraisers may have to cope with in the future.


This lawsuit is the biggest appraisal liability case in the U.S. in terms of alleged damages ($24 billion) and is at the extreme end of frivolity as to the connection – or lack thereof – of the unintended users of the appraisal. However, in terms of legal issues and parties involved, it is not unlike hundreds of similar cases filed by parties who are not the intended users of the appraisers’ report and, in some cases, not even parties the appraisers could have imagined would receive the reports. In fact, a majority of legal claims against appraisers are filed by parties who are not the appraisers’ clients or identified as intended users.

The case concerns loans and appraisals for loans to the developers of four luxury projects in Idaho, Montana, Nevada and the Bahamas. The plaintiffs aren't the appraisers’ clients or anyone the appraisers might have imagined as report users, but rather an alleged class of approximately 3,000 individuals who purchased lots or homes in the resorts built by the developers to whom lender Credit Suisse loaned money.

The plaintiffs contend that Credit Suisse created what they label a “Loan-to-Own” scheme under which Credit Suisse, aided by inflated appraisals, loaned hundreds of millions of dollars intending that the developers would default and that Credit Suisse would then foreclose and obtain ownership at below market value. As ridiculous as it might sound, the appraisal firm – which is a division of a national brokerage and is named as a defendant – has had to defend itself against the plaintiffs’ claims for more than a year at great expense.

The relevance of this case to appraisers is multifold. It calls attention to the fact that the concepts of intended use and user do not protect appraisers from litigation by third parties as strongly as most appraisers would like to believe. Despite the tenuous nature of their claims, the plaintiffs’ case has so far survived two motions to dismiss. Appraisers must focus on tightening language in their reports to make claims by such parties less supportable.

The case also highlights the dangers of professional cannibalization. The appraisers at the defendant appraisal shop have discovered that their contemporaries, or rather competition, are ready and willing to testify against them and advocate for their liability to parties whom the appraisers never imagined as intended users and for purposes anathema to why they produced their reports. Recall that the appraisals were for loans to the developers and that the lots and homeowners were not parties to these loans – in fact, many purchased their properties before the loans were made.

Yet the plaintiffs’ expert witness appraiser offered such conclusions as: “In my opinion, the procurement and use of the appraisals was designed to artificially inflate values so as to defraud developers, and others who had, and would, purchase lots or homes or otherwise invest in the resorts.” Professional attacks such as these ensure that the relevance of intended use and user will continue to erode for all appraisers and interfere with their ability to serve actual clients and users.

Finally, the alleged damages at stake and cost of defending some of these unintended user cases are impacting the
profession by highlighting the risk faced by large commercial appraiser operations. That risk, of course, also captures the
attention of insurance carriers and, perhaps more significantly, may impact the sustainability of appraiser operations within
large real estate service and brokerage companies.

FDIC v. CoreLogic Appraisal Services, LLC, f/k/a eAppraiseIT, LLC, et al., and FDIC v. LSI Appraisal,
LLC, et al., U.S. District Court (C.D. Cal.), Filed May 9, 2011

The Federal Deposit Insurance Company filed suit in May against two national appraisal management companies, and those
suits are not only the FDIC’s first large-scale appraisal liability cases but also the largest cases filed against any AMCs by
anyone. The FDIC alleges that the AMCs supplied hundreds of “grossly negligent” appraisals to Washington Mutual from
2005 through 2007. Approximately 200 appraisals were involved in each case, and the FDIC is seeking more than $100
million in alleged damages against each AMC.

While the cases will have company-specific financial impact, both cases also could have significant impact on residential
appraising in general. They present the issue of whether an AMC can be found directly liable for faulty appraisal work by their
“independent contractor” appraisers. The FDIC has recently made the argument that fee panel appraisers are the legal
agents of AMCs and that AMCs are thus liable for all appraiser negligence on that basis.

The FDIC’s two cases also highlight the potential industry-wide impact that FDIC litigation may have. While these two cases
are by far the FDIC’s largest appraisal-related matters, it has filed many smaller liability cases over the last four years against
more than 100 individual appraisers and appraisal firms. To date, these cases have focused on the residential sector, but
actions against commercial appraisers are anticipated.

How is the FDIC able to sue over appraisals delivered years ago? Appraisers should understand that the statutes of limitation
pertaining to professional liability have nothing to do with USPAP’s five-year recordkeeping requirement – in most states,
appraisers are routinely sued about appraisals dating back to the real estate bubble. Also, the FDIC itself receives an
extension of any statutes of limitation – up to three additional years for tort claims (e.g., negligence). Regardless of USPAP’s
minimum, appraisers are strongly urged to retain their work files for at least eight years – preferably longer – because a strong
work file is the appraiser’s best defense.

O’Brien v. Quicken Loans, Inc., et al., Circuit Court of Ohio County, WV, Filed Oct. 29, 2009

This case is tiny in comparison to the others, but it is one of the first in which an AMC has sought to enforce an
indemnification clause in an AMC contractor agreement. While it’s extremely rare for AMCs to try to enforce those clauses
and sue appraisers, this is one of those exceptions.

After being sued by a borrower, the AMC filed a cross-complaint against an appraiser for indemnification under the contractor
agreement – the appraisal at issue was for a loan in 2007 by the AMC’s affiliated lender. It passed through the AMC’s quality
controls. Two years earlier, the appraiser had signed the AMC’s agreement containing a one-sided indemnification clause.
The appraiser promised he would indemnify the AMC for all damages, losses, penalties and fines that the AMC might incur “in
any way related to ... any appraisal report submitted to (the AMC)." This appraiser was not in any economic position to
decline work and was in bankruptcy when he signed the contractor agreement.

The AMC demands under the indemnification clause that the court enter a judgment against the appraiser for any damages
that the AMC is found liable for to the borrower. That cross-complaint is not likely to produce results, however, because the
appraiser is again in bankruptcy and his insurance coverage appears to have been exhausted by defending other claims,
including claims about appraisals he delivered to the same lender through the same AMC.

Regardless of whether this particular appraiser produced shoddy work, the bigger legal issue is whether this case and the
handful like it are predictors of future widespread indemnification actions by AMCs. If so, U.S. residential appraisers will feel
more kinship with their Australian counterparts and their professional liability insurance crisis.

**Appraisers - Real Estate Agents - Lenders Did You Know?**

No person violates state statute solely by asking a real estate appraiser to consider additional, appropriate property
information, or to provide further detail, substantiation, or explanation for the appraiser's value conclusion, or to correct errors
in the appraisal report, or by withholding payment of an appraisal fee based on a bona fide dispute regarding the appraiser's
compliance with the appraisal standards adopted by the Department of Labor and Regulation. A person does not violate state
statute solely by retaining a real estate appraiser from panels or lists on a rotating basis, or by supplying an appraiser with
information the appraiser is required to analyze under the appraisal standards adopted by the department, such as
agreements of sale, options, or listings of the property to be valued. [See SDCL 36-21B-11 and 36-21B-12]