



March/April 2015

From the Director

In this issue from the [South Dakota Real Estate Commission:](#)

- From the Director
- Meet Judy Cook – Spring Education Caravan Presenter
- Spring Caravan Info
- Disciplinary Actions
- Out-Of-State Education Q&A
- New Licensees

In this issue from the [South Dakota Appraiser Certification Program:](#)

- New Licensees
- Review of Cases
- Advisory Council Vacancy
- Appraisal Qualifications Board Q&A
- Enforcement Perspective
- Legal Corner

[South Dakota Real Estate Commission](#)

Melissa Miller
Executive Director
221 W. Capitol Ave.,
Suite 101
Pierre, SD 57501
Phone: 605.773.3600
Fax: 605.773.4356

[South Dakota Appraiser Certification Program](#)

Sherry Bren
Executive Director
308 S. Pierre St.
Pierre SD 57501
Phone: 605.773.4608
Fax: 605.773.5405

Spring is definitely in the air and the Spring Caravan is just around the corner. Be sure to register and note the locations. National property management expert Judy Cook will be the Spring Education Caravan speaker. Judy's presentation, "Property Management: Tips, Tricks, Tools, and Torts" will provide interesting insight into today's world of property management. Please try to fit this seminar into your schedule.

After a little more than nine years of faithfully serving the citizens of South Dakota as a commission member, Paula Lewis's appointment expires on April 11, 2015. We will all miss Paula's wisdom, dedication and years of experience. Paula was presented with a plaque at our March 17 meeting.

In April, I will be attending the Association of Real Estate License Law Officials (ARELLO) Mid-Year Meeting where I will talk to other state regulatory agencies about topics such as fair housing, exam accreditation, education issues and more.

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

I wish you all a successful spring.



Commissioner Paula Lewis is presented a plaque in honor of her years of service on the SD Real Estate Commission by Executive Director Melissa Miller and Commission Chairperson Matt Krogman at the March 17 meeting in Pierre.

Thank you, Paula!

Commission Calendar

Friday, April 3 – SDREC office closes at noon for Easter holiday

Wednesday, May 13 – Commission Meeting, Pierre (tentative)

Spring Education Caravan Presenter – Judy Cook



Judy Cook is an author and instructor of pre-licensing and continuing education courses for Property Managers and Community Managers. She is actively licensed in Nevada as a Broker and Property Management Permit Holder, with more than 25 years' hands-on experience managing both commercial and residential properties.

Judy began teaching property management classes in the early 1990s, and is well-respected as one of the industry's leading providers of timely and useful information. Judy's career is marked by her efforts to enhance the professionalism of the property management industry.

Judy is an expert in standards and practice of property management — including residential, commercial and common-interest communities. She has a profound knowledge of property management law, fair housing law, and trends in landlord-tenant law. She also has a unique understanding of the practical side of the property management business through her many years as a practitioner and through her constant interactions with property managers all across the U.S.

Register NOW for the Spring Caravan

Presenter: Judy Cook

Topic: Property Management: Tips, Tricks, Tools and Torts!

CE Approval 6 hours Required

Postlicensing: 3 hours Postlicensing 1/Ethics and
3 hours Postlicensing 1/Fiduciary Duties
(NO Postlicensing Period 2)

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

Thursday, April 23 – Sioux Falls Ramkota Washington Room

Friday, April 24 – Sioux Falls Ramkota Annex

Tuesday, May 5 – Rapid City Rushmore Plaza Civic Center Alpine Rm.

Wednesday, May 6 – Pierre Ramkota

Thursday, May 7 – Aberdeen Ramkota

This course is a real-world overview of the business of residential property management, with topics ranging from business-building to contract negotiations, and avoiding some of the most common legal pitfalls. After attending this course, the participant will be able to employ common-sense risk management tactics in his/her day-to-day activities, while building a successful (and profitable!) portfolio of management properties and clients.

Some highlights include:

- A sampling of some popular (and helpful!) property management agreement and lease agreement terms and conditions
- An overview of key laws and regulations impacting the property management business
- A discussion of disciplinary actions and legal cases against property managers, and an exploration of ways in which the disputes and/or violations might have been avoided

Registration Fee: \$60 online or **POSTMARKED NO LATER than Wednesday, April 15;** \$70 after April 15 and on-site (The Commission will retain \$10 of any refunded registration.)

Registration information has been mailed to all real estate offices. Online registration is available on the SDREC website until April 15.

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.

Danielle Merrow, Sioux Falls, Broker. Consent Agreement. Violation of 36-21A-71(1),(22),(30),&(32), SDCL 36-21A-130, SDCL 36-21A-136(1)&(2), and ARSD 20:69:16:01 for failure to provide client with the Consumer Guide, failing to have the client sign a Buyer Agency Agreement and for failing to protect the interests of the client by not understanding that lender approval was required in a short sale transaction. Administrative fine of \$1500 and completion of six hours in Agency, six hours in Contracts and six hours of License Law.

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.

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):

Mark Reese, BA, Spearfish
Bryan Hanson, BA, Pierre
Donna Kubik, Broker Assoc., Chamberlain
Matthew Swartwout, BA, Sioux Falls
Jana Bye, BA, Vermillion
Carmen Kuchenbecker, BA, Rapid City
Tyler McGregor, BA, Salem
Sarah Flemmer, BA, Brandon
Thomas Simmons, Broker, Sioux Falls
Bill Conkling, Broker, Yankton
Fern Sanders, BA, Aberdeen
Shannon (Shay) Matkins, BA, Rapid City

Todd McPherson, BA, Rapid City
Daniel Tribby, BA, Rapid City
Caleb Svartoi, BA, Brookings
Betsy Hughes, BA, Vermillion
Lynn Arnold, BA, Rapid City
Bradly Olson, BA, Lennox
Michael Robbins, Home Inspector, Aurora
Troy Engstrom, BA, Watertown
Stuart Thill, BA, Sioux Falls
Lance O'Farrell, BA, Watertown
Tom Bozied, BA, Brookings

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):

Pam Williams, BA, Watertown
Brenda Thompson, BA, Madison
Sally Solum, BA, Tea
Tracie Ambur, BA, Sioux Falls
Sandy McConnell, BA, Sioux Falls
Daniel Todd, Broker, Pierre
Stephanie Zomermaand, BA, Sioux Falls
Teri Able, BA, Sioux Falls
Bryan Mulder, Broker, Sioux Falls
Marissa Jondahl, BA, Aberdeen
Michael O'Dea, BA, Sturgis
Melissa Cuke, BA, Yankton

Greg Woolridge, BA, Rapid City
Matthew Kirk, Broker, Spearfish
Alicia Hocke, BA, Rapid City
Margue Fenner, BA, Sioux Falls
Halli Holden, BA, Pierre
Johnny Hanson, Broker, Sioux Falls
Tara Allen, BA, Sioux Falls
Eric Fenicle, BA, Sioux Falls
Corey DeVille, BA, Sioux Falls
Jessica Olson, BA, Rapid City
Dallerie Davis, Broker, Rapid City
Deb Even, Property Manager, Sioux Falls

Out of State Education Approval Q&A

Question: I hold a license in another state and took some classroom education in that state. Can I use the hours for my continuing education requirements for my South Dakota license?

Answer: It depends – if the course was approved for continuing education in another state, then YES, the hours will count!

ARSD 20:69:11:09. Approval of out-of-state courses. *If a South Dakota licensee enrolls in a continuing education course approved by another state's real estate regulatory agency, that course may be used to meet postlicensing or continuing education requirements in South Dakota.*

Proof of the other state's approval and course completion are required before the credits are accepted by the commission.

This applies only to classroom courses. The course content must also meet the content standards and length requirements outlined in administrative rule.

Application for approval of the out-of-state course must be made to the commission within 60 days after the course date.

New Licenses

Broker Associate

Baum-Fjestad, Kate – Sturgis
Dike, Justin W – Rapid City
Fisher, Marlys M – Sioux Falls
Klein, Kiley K – Herrick
McCarthy, Crain A – Sioux Falls
Nelson, Bailey, Audra L – Spearfish
Noess, Loren R – Mitchell
Silvers, Samantha E – Rapid City
Weyh, Joshua P - Watertown

Bechtel, Calli E – Rapid City
Erickson, Parker G – Vermillion
Hoium, Doreen J – Watertown
Lewis, Irina S – Rapid City
Miksik, Radim – Yankton
Neopanay, Chhabi Lal L – Sioux Falls
Ronke, Todd J – Watertown
Sneeden, Jericho R – Watertown

Broker

Cronen, Catherine R – Moorhead, MN
Mulligan, Paul B – Omaha, NE
Stultz, Christine R – Sergeant Bluff, IA
Weinzetl, Michelle M – Annandale, MN

McDonald, Gregory S – Sioux Falls
Olsen, Ryan O – Rapid City
Usasz, Michele L – Ericson, NE

Salesperson

Steffes, Max – Fargo, ND

Residential Rental Agent

Adams, Zach – Sioux Falls
Thoreson, Kathryn A – Sioux Falls

Knutson, Lori L – Spearfish

Property Manager

Klundt, Brenda J – Lead

McGregor, Sheri A – Sioux Falls

Home Inspector

Bradshaw, Michael – Sioux Falls
Moblely, Frank A – Pierre

Kobernusz, Joshua L – Sioux Falls
Tobin, Wade P - Spearfish

In this issue from the [South Dakota Real Estate](#)

Commission:

- From the Director
- Meet Judy Cook – Spring Education Caravan Presenter
- Spring Caravan Info
- Disciplinary Actions
- Out-Of-State Education Q&A
- New Licensees

In this issue from the [South Dakota Appraiser Certification](#)

Program:

- New Licensees
- Review of Cases
- Advisory Council Vacancy
- Appraisal Qualifications Board Q&A
- Enforcement Perspective
- Legal Corner

South Dakota Real Estate Commission

Melissa Miller
Executive Director
221 W. Capitol Ave.,
Suite 101
Pierre, SD 57501
Phone: 605.773.3600
Fax: 605.773.4356

South Dakota Appraiser Certification Program

Sherry Bren
Executive Director
308 S. Pierre St.
Pierre SD 57501
Phone: 605.773.4608
Fax: 605.773.5405

Appraiser Update

New Licensees – January/February 2015

Joseph W. Hammond, State-Registered – Gillette, WY
Elizabeth R. Johnson, State-Certified Residential – MN
Carl R. Clavel, State-Certified General - CO

Review of Cases – January 1 – March 5, 2015

For the period January 1, 2015 through March 5, 2015, the Department has initiated one complaint investigation case and one new applicant claiming experience case.

Complaints – one pending.
New with Experience – one pending.

Vacancy – Appraiser Certification Program Advisory Council

The Department of Labor and Regulation, Appraiser Certification Program is seeking nominations for the position of State-Certified Residential Appraiser.

The Advisory Council is responsible for advising the Department Secretary in matters of program administration, procedure., and policy in order to sustain a program that is consistent with Title XI, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 administered by the Appraisal Subcommittee and the uniform standards and qualifications criteria as set by the Appraisal Standards Board and the Appraiser Qualifications Board of the Appraisal Foundation. The council members do not receive compensation for attending meetings or for any travel expenses incurred to serve on the council. Four meetings are held each year in Pierre. The term is four years.

If you are interested in nominating yourself or another appraiser for appointment to the Advisory Council, please submit your nomination in writing to the Department of Labor and Regulation, Appraiser Certification Program, 308 S. Pierre Street, Pierre, SD 57501.

The nomination should include the appraiser's name, address, appraiser title and the reason that you believe you or the person you have nominated should be appointed to the Advisory Council. Any person nominated for this position should possess substantial knowledge regarding appraising, a reasonable understanding of Title XI of FIRREA and its impact on the appraiser profession, and be highly respected by other appraiser professionals.

Please submit nominations to the Department no later than May 1, 2015. If you have any questions, please feel free to contact Sherry Bren at 605.773.4608.

Appraiser Qualifications Board Q&A Vol. 6, No. 2 – December 2014

Experience

Question: I currently have two unlicensed trainees who have been working for me for a number of years. I have not required them to obtain a Trainee Appraiser credential, even though they have taken all of the required courses. After the new Criteria is implemented on January 1, 2015, will they be required to obtain a Trainee Appraiser credential in order to continue to obtain experience credits toward the Certified General credential?

Response: No. The Appraiser Qualifications Board (AQB) does not require an individual to possess a Trainee Appraiser credential in order to obtain experience credit. However, because individual states may implement criteria more stringent than the AQB, it is important to check with your state appraiser regulatory agency.

Question: Is there any requirement within the Real Property Appraiser Qualification Criteria that would prohibit an appraiser from counting commercial experience toward obtaining a Certified Residential credential?

Response: No. The Real Property Appraiser Qualification Criteria issued by the Appraiser Qualifications Board (AQB) does not specify that the experience hours required for the Certified Residential credential must all be obtained in the appraisal of 1-4 unit residential properties. As a result, experience obtained in the appraisal of non-residential (including 5+ unit residential) properties for use toward a Certified Residential credential is not prohibited by the AQB.

However, as with all AQB Criteria, states may establish requirements that are greater than, or more restrictive than, what the AQB requires. As a result, you will need to confirm with your state appraiser regulatory agency whether they have such a requirement.

Supervisory Appraiser Eligibility

Question: I am a state-certified appraiser and am considering supervising a Trainee Appraiser. I was recently suspended from the HUD appraisal roster but have not been sanctioned by my state appraiser regulatory agency. Am I considered to be "in good standing" under the Real Property Appraiser Qualification Criteria, and therefore eligible to supervise a Trainee Appraiser?

Response: Yes. The Real Property Appraiser Qualification Criteria specifies Supervisory Appraisers shall not have been subject to any disciplinary action within any jurisdiction within the last three (3) years that affects the Supervisory Appraiser's legal eligibility to engage in appraisal practice. Although HUD has suspended you from their approved panel, this action does not, in and of itself, affect your legal eligibility to engage in appraisal practice in your credentialing jurisdiction. However, be sure to check with your state appraiser regulatory agency to confirm the state's requirements which could be more restrictive.

Education

Question: I see that the Real Property Appraiser Qualification Criteria requires that all Qualifying Education be taken within five (5) years of obtaining a Trainee Appraiser credential. I am applying for a Certified Residential credential. Does this requirement apply to me?

Response: No. The Real Property Appraiser Qualification Criteria only requires that applicants for a Trainee Appraiser credential complete their education within five (5) years of application. This requirement does not apply to those individuals applying for a Licensed Residential, Certified Residential or Certified General credential.

However, be sure to check with your state appraiser regulatory agency to confirm the state's requirements, which could be more restrictive.

[The reader is advised that in all cases, the above responses are based upon the minimum criteria adopted by the AQB. Individual states can adopt more stringent requirements. Please check with the state appraiser regulatory agency in your state to confirm their specific requirements.]

The AQB Q&A is posted on The Appraisal Foundation website (www.appraisalfoundation.org)

Enforcement Perspective

(Reprinted from 'The California Appraiser' Fall 2014 Edition with Permission of the Bureau Chief, James S. Martin)

2006 Called – the Departure Rule Boilerplate is Missing

As a senior investigator for the Bureau of Real Estate Appraisers, in the midst of reading an appraisal report with an effective date of 2010, I noticed the appraiser reported the Cost Approach and Income Approach were not developed in compliance with the Departure Rule. I have to admit that I am a self-proclaimed Uniform Standards of Professional Appraisal Practice (USPAP) junky and was fully aware the Departure Rule was retired from USPAP as of July 2006. Nonetheless, appraisers are required to take a seven-hour USPAP course every two years, so I have to believe that, even if the appraiser had barely stayed awake for the USPAP update, they would have been aware of this retired rule.

Despite the fact that the reporting of this rule was antiquated, you may be asking yourself why this was an issue. It's probably just a case of some old "boilerplate addendum" language the appraiser forgot to take out of the report. In this case, the issue was that this language was in direct violation of the 2010 edition of USPAP Standard Rules 1-4 and 2-2(a, b and c) (viii). Standard Rule 1-4 requires that in developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results. Whereas, Standard Rules 2-2 (a, b and c) each require an explanation for why the Sales Comparison, Cost, and Income Approaches have been excluded. Two Standard Rule violations all because an appraiser forgot to clean up the boilerplate language!

You may be thinking that would never happen to you because, although not a card-carrying member of the USPAP junky club, you know your way around the standards. You sign up for your seven-hour update every November of the odd year just to ensure that your boilerplate language has been updated to reflect the new version of USPAP. You're golden, right? Wrong!

Many residential fee appraisers in particular, and often general appraisers, who work in the same geographic areas, tend to rely on nonspecific boilerplate. The problem often arises when assignment-specific language is added to the report that is in direct contradiction to the boilerplate language already in the template or cloned report.

Examples exist everywhere, but some of my favorites from residential reports are references to Home Valuation Code of Conduct (HVCC) after 2010 (it was retired) and the Appraisal Independence Requirements (AIRs) within the same report. Another one of my favorites is when the appraiser develops an Income Approach for a two- to four-unit assignment but includes a reconciliation boilerplate addendum statement similar to: "The Income Approach does not apply because the market segment is primarily owner occupied." Really? You just reported four comparable sales that were tenant occupied.

And let's not forget the ever-present market conditions boilerplate found in the narrative style report that has varying references to real estate booms and crashes. The appraiser leaves the reader with a dated reference to the catastrophic decline in property values as a result of the recent economic crash. In the meantime, the appraiser has completed a market analysis documenting an increase in the market and applies the appropriate appreciation adjustment to the comparable sales. The same studious appraiser summarizes the support used for the upward market adjustments.

What is the reader of the report to believe? How does the reader know which of these statements is accurate? Since the 2004 edition of USPAP, the Preamble has established USPAP's purpose as promoting and maintaining a high level of public trust in appraisal practice. It goes on to say, in part, that it is essential appraisers develop and communicate to the user in a manner that is meaningful and not misleading.

Boilerplate that is **not** assignment-specific is not meaningful, and when combined with contradictory language, is misleading. How is the public to trust that?

Read your report from the perspective of the specific assignment, intended use, and intended user. Then have yourself a belly laugh at the absurd, contradictory, and sometimes significantly obsolete language as you correct the report PRIOR to submitting it to your client – or worse yet, prior to it being submitted to BREA.

Legal Corner

(Reprinted from 'The California Appraiser' Fall 2014 Edition with Permission of the Bureau Chief, James S. Martin)

In litigation, it's called a "battle of the experts." One side's hired witness says something and the other side's says the opposite. In some cases, the witness is a licensed appraiser acting in that role.

While the attorney is ethically required to zealously advocate on behalf of the client, a witness acting as a licensed appraiser is ethically forbidden from doing so. Can these cross purposes be reconciled? They must be.

Appraisers in this situation should remember a few things: (a) The Uniform Standards of Professional Appraisal Practice (USPAP) apply; (2) neither the attorney nor the evidence code has authority to exempt you from USPAP; and (3) you "must not advocate the cause or interest of any party or issue[.]"

The appraiser considering litigation work should carefully consider USPAP standards that potentially apply, in addition to the duty to refrain from advocacy, including the Jurisdictional Exception Rule, rules regarding drafts, rules regarding intended use and user, as well as all Advisory Opinions and frequently asked questions illustrating them. Following is a general outline.

California statute and BREA regulations provide that USPAP applies, whether the work is for a federally related transaction or not.

USPAP's paramount purpose is instructive. The purpose is promote public trust – accomplished by communicating analyses, opinions, and conclusions in a manner that is meaningful and not misleading. Moreover, an appraiser must perform assignments with "*impartiality, objectivity, and independence.*" These are the overarching standards.

The Jurisdictional Exception Rule has many valid uses. Litigation is not one of them. Appraisers do not have to comply with the Evidence Code – the attorney does. And though an attorney may have an expansive view of their powers, waiving USPAP rules isn't one of them.

Rules regarding drafts may be relevant. Don't let the attorney use your "draft" in a manner that is misleading. Clearly identify drafts as such.

Misidentification of the intended use or user may also lead to USPAP violations. You are obligated to know whether the attorney is going to use your work as a sword or shield in battle.

In short, don't let the client's cause become yours. You're a better, more credible witness (and can charge more money), when your opinions are based on thorough analysis and sound reasoning.