



May/June 2015

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[South Dakota Real Estate Commission](#)

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From the Director

Spring is here and we are all so happy to see some rain!

I recently attended the Association of Real Estate License Law Officials (ARELLO) Mid-Year Meeting in Albuquerque, NM. I participated in meetings concerning education issues, administration regulation, real estate best practices and the board of directors meeting. It was a very interesting and productive meeting.

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

For those of you requesting the licenses of new licensees, please be patient. It takes two to three weeks to process a license, even longer if the application is not completed or is missing required documents. Once the license is issued, the new licensee will appear on the roster of active licensees on the Commission website.

At the Spring Education Caravan, Judy Cook talked about the importance of belonging to a professional property management association for those individuals that are in the property management business. I cannot agree more and encourage all licensees to belong to a professional association in the area of real estate that is relevant to one's practice. There are a number of Associations in South Dakota for real estate professionals, including the SD Association of REALTORS®, the SD Auctioneers Association and the SD Multi-Housing Association, just to name a few. There are also many national organizations that are geared toward the property management, home inspection and commercial real estate industries.

The mission of the Real Estate Commission is to protect the interest in the public in a real estate transaction. We do this by establishing minimum standards for education, licensing and practice of the licensees under the Commission authority.

A professional association goes far beyond regulatory minimums. They are at the forefront of industry trends, ethics, and lobbying, plus they offer opportunities for networking and industry-specific education.

It is important for licensees to understand the difference between the SD Real Estate Commission and a professional association. The Commission has authority over the state-issued license and the requirements necessary to obtain and maintain it. An association does not have any authority over the license, but has its own standards as a requirement for membership.

The Commission appreciates its positive working relationship with the professional associations here in South Dakota as we strive to achieve our common goals.

Commission Calendar

Friday, July 3 – Commission office closed for Independence Day Holiday

Commission Gives Final Approval to Administrative Rules

The SDREC held a public hearing on May 13, 2015 and approved the proposed changes to the administrative rules. The purpose of these changes is primarily to change the postlicensing education required of new broker associates.

The new administrative rules will still require that newly-licensed broker associates complete 30 hours of postlicensing education in the first license cycle and 30 hours the second license cycle. However, instead of assigning specific topic areas, as currently required, the 60 hours will just need to be in any of the Required subject areas.

The rules, as adopted by the Commission, still need to go before the Legislative Rules Review Committee, but should be provisionally effective by early July.

It is important to note that for those licensees currently in either Postlicensing Period 1 or Postlicensing Period 2, any hours that have already been completed to meet the current postlicensing requirement WILL also count toward the new requirement.

Other rules changes include clearer definitions of Required and Elective subject areas, the 50-minute classroom clock hour and courses that do not qualify for continuing/postlicensing education. Questions regarding the rules changes can be directed to Karen Callahan, Education Director – Karen.callahan@state.sd.us.

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.

James Trucano, North Sioux City, 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.

Disciplinary Education Reminders

In cases of disciplinary action by the Commission, the licensee involved is often required to complete extra education in specific areas relevant to the original complaint. When the Commission requires such education, the course(s) usually must be completed in a classroom setting. This education does not count toward the licensee's continuing education requirement necessary for license renewal.

It is absolutely imperative that a licensee who must complete education specific to an order by the Commission take steps **immediately after the order is final to seek out these courses**.

Classroom courses such as agency, contracts, the responsible broker course, etc. **may not be frequently available** in every part of the state.

The licensee is given several months to complete the education, but in many cases, waits until just before the education is due to even begin looking for courses! It is an understatement to say the Commission highly frowns upon this and any subsequent request to extend the deadline will likely not be granted.

The completion of education and payment of a fine in connection with a disciplinary action taken by the Commission is a serious matter and not one that licensees should take lightly. Licensees can contact the SDREC office for assistance in finding the appropriate courses or check the SDREC website for the list of upcoming classroom courses.

Failure to complete the requirements of an order by the Commission in a disciplinary matter can result in immediate suspension of the license until the conditions of the order are met.

New Licenses

Broker Associate

Anifinson, Bryan A – Brandon
Bekele, Hunegnaw – Sioux Falls
Brady, Carol A – Tea
Buehler, Cherlyne G – Sioux Falls
Canfield, Aaron – Sioux Falls
DePerno, Dean J – Sioux Falls
Ebeling, Douglas D – Sioux Falls
Erichsen, Jill A – Watertown
Greer, James K – Sioux Falls
Hamiel, Kathryn J – Saint Lawrence
Hart, Robert C – Windsor, CO
Hill, Sara J – Rapid City
Johnston, Ginger – Belle Fourche
Kramer, Andrew D – Sioux Falls
Lawrence, Anne L – Sioux Falls
Meger, Alex – Sioux Falls
Nelson V, James S – Rapid City
Orth, Shayne – Spearfish
Reigle, Nichole E – Aberdeen
Rudland, Justin – Rapid City
Shirley, Michael – Sioux Falls
Stunes, Tyler J – Sioux Falls
Theesen, Andrew – Sioux Falls
Van Ghent, Tera R – Rapid City

Baylor, Clayton E – Crofton, NE
Boucher, Kayleigh – Watertown
Brown, Gregg A – Brandon
Buhler, Mary – Sioux Falls
Dean, Laura – Hill City
Dixon, Traci L – Brookings
Ellis, Robyn T – Box Elder
Goltz, Sky G – Harrisburg
Groeneweg, Mark A – Sioux Falls
Hansen, Kief D – Rapid City
Herr, Megan H – Watertown
Jewett, Ryan O – Sioux Falls
Kallevig, Grant – Beresford
Kudlock, Tim J – Spearfish
Maunder-Delight, Amber – Rapid City
Mogen, Bonnie – Dell Rapids
Niedert, Trudy J – Milbank
Rehfeldt, Brad L – Sioux Falls
Richards, Nicholas – Sioux Falls
Schumacher, Jason H – Sioux Falls
Stevens, Bradley A – Sioux Falls
Swingler, Kim – Brandon
Tielke, Darla M – Yankton
White, Landon, Rapid City

Broker

Bradsky, Ashley L – Rapid City
Kuper, Reed B – St. Ansgar, IA
Shuman, Scott H – Eaton, CO

Forbes, Lynne K – Sioux Falls
Olafson, Stefan H – Grand Forks, ND

Salesperson

Geary, Jason E – Sioux City, IA
Tramp, Norman “Nick” N – Dixon, NE

Sears, Korley B – Tucson, AZ

Residential Rental Agent

Anderson, Michaela S – Spearfish
Doeden, Nicole E – Sioux Falls
Kovash, Kristin L – Sioux Falls
Meyer, Erik A – Sioux Falls
Osterloo, Alyssa R – Sioux Falls
Tott, Holly P - Brandon

Daws, Megan M – Sioux Falls
Herl, Carri – Sioux Falls
Maeschen, Jessica L – Brandon
Musch, Jessica – Lennox
Osterloo, Kari – Sioux Falls

Property Manager

Buehler, Autumn – Rapid City
Krentz, Peter J – Sioux Falls
Simonson, Jenny M – Rapid City

Johnson, Josh W – Sioux Falls
Royer, Andrew V – Brookings
Snyder, Mandi M – Hendricks, MN

Home Inspector

Armendariz, Ray – Hermosa
Strohfus, Chad – Pierre

Marbach, Joshua D – Sioux Falls

Timeshare Agent

Houchins, Todd D – Rapid City
Vogel, Jacob S – Rapid City

Pace, Meghan R – Rapid City

Appraiser Update

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New Licensees – March/April 2015

David Goldammer, State-Certified General – Minneapolis, MN

Diedre L. Lange, State-Licensed – Ipswich, SD

Roger F. Morrissey, State-Certified General – Omaha, NE

Review of Cases – January 1 – May 12, 2015

For the period January 1, 2015 through May 12, 2015, the Department has initiated two complaint investigation cases and one new applicant claiming experience case.

Complaints – Two pending.

New With Experience – Issued.

Notice

“New” Appraisal Experience Log Form In Service and Required Effective June 1, 2015

The Appraiser Certification Program has adopted and put into service a new Appraisal Experience Log form as of April 1, 2015.

The Appraisal Experience Log form is utilized by the Appraiser Certification Program for verification of appraisal assignments and acceptable appraisal experience hours to ensure experience requirements have been met by appraisers seeking to upgrade to a higher appraiser classification or for new applicants claiming experience and applying for a certified or licensed appraiser classification.

Beginning on or before June 1, 2015, appraisal experience must be documented using the new Appraisal Experience Log form found at the Appraiser Certification Program website: <http://dlr.sd.gov/appraisers/forms>. Instructions for completing the form are included in the file. (Please note that this form is unavailable on the State of South Dakota On-line Forms.)

Please note that you may submit the Appraisal Experience Log that you have completed using the “old” log form for experience claimed prior to June 1, 2015. **The Appraiser Certification Program will only accept the new Appraisal Experience Log form for assignments and experience hours claimed on or after June 1, 2015.**

If you have any questions, please feel free to contact Sherry Bren by telephone at 605.773.4608 or by email at sherry.bren@state.sd.us

Bad Reviews - Lawsuits about appraisal reviews present new threats

By Peter T. Christensen, general counsel, LIA administrators & Insurance Services
(Re-printed with the permission of the Appraisal Institute)

Finally, the frequency of negligence claims against appraisers for work performed at the height of the real estate bubble is winding down, but as this occurs, new areas of litigation are emerging and focusing on appraisal review. One explanation for more lawsuits about reviews is the sheer volume of work being performed – more reviews are being performed now than ever before. Another is that some review appraisers lack the necessary competency to perform the work and fail to understand their risk when performing reviews.

Bad Reviews (cont.)

I've identified two types of claims that are most frequently made against appraisers performing review assignments:

Loan Origination/Purchasing

Lenders often rely on the accuracy of an appraisal to support a loan decision, but they may also rely on a review to assess the quality of that appraisal in making their decision. Therefore, appraisal reviewers – without ever having provided their own opinions of value – are essentially exposed to the same potential for liability to lenders as the appraisers who perform the appraisal being reviewed.

I've seen cases where lenders that experienced losses on foreclosed properties filed suit against both the original appraiser and the review appraiser. In one particular case, the Federal Deposit Insurance Corporation, as the receiver for a failed bank, sued both the original appraiser and the reviewer. The original appraiser obtained a quick dismissal of the FDIC's claim when he proved that the appraisal had been forged and was not his work. In contrast, the reviewer had no viable defense for his review. While it wasn't his responsibility to spot the forgery, he certainly should have noticed that the forged appraisal applied adjustments to the comparables in reverse by negatively applying adjustments when they should have been positive and vice-versa. His review was merely a rubberstamp and liability was sealed.

In some cases, lenders may choose to sue only the reviewer because that's the person with whom they have a direct relationship; a lender may not even have been named as a client on the appraisal. In these cases, particularly if the lender and the reviewer have a contract that contains indemnification language, the lender simply will have an easier claim to make against the reviewer. I've also seen cases where the lender may sue a single reviewer over a collection of allegedly flawed reviews rather than pursue individual claims against each of the appraisers.

Because of the potential for liability, it is particularly important for review appraisers to detail the precise scope of work for the review so as to avoid responsibility for areas outside that scope. Carefully describe any special assumptions or conditions that pertain to the review, and treat the assignment with the same care afforded regular appraisals.

Defamation Claims

Review appraisers are more susceptible to libel and slander claims (both are forms of defamation) than are appraisers who perform standard appraisal work. With any type of review – whether the work is used in connection with loan origination, to support a mortgage repurchase or in litigation – there is the potential for the appraiser whose work is reviewed to be offended or injured by the content of a negative review. In some situations, a negative review can result in the appraiser losing work, winding up on a "blacklist," facing disciplinary action or being sued for professional negligence.

I've received calls from appraisers who are facing such consequences as the result of a negative review and want to sue the review appraiser. I've also received calls from reviewers who actually have been sued by an aggrieved appraiser. In these situations, I've shared my honest assessment: an appraiser suing a review appraiser for defamation usually will lose and their claim will be dismissed well before it goes to trial (except in rare cases with special facts). Defamation claims generally are difficult to win, and the professionals conducting the appraisal review are protected in most situations by strong legal privileges – and in most cases, the privileges do not depend on whether or not the review is accurate. Of course, that hasn't stopped defamation claims from being filed.

Bad Reviews (cont.)

In 2009, the Montana Supreme Court decided one such case. The landowners involved in separate takes by the Montana Department of Transportation hired the same experienced condemnation litigation appraiser. An appraiser employed by the Montana DOT filed complaints with the Montana Board of Real Estate Appraisers against the landowners' appraiser regarding the appraisal work. In one complaint, the state appraiser alleged that she had reviewed the appraisal and noted that "the deficiencies are readily apparent." In the other complaint, she stated that another state appraiser also had reviewed the appraisal and again noted that "the deficiencies are readily apparent." In both complaints she requested that the Board "determine whether or not [the appraiser] complied with (the Uniform Standards of Professional Appraisal Practice), and if not, take appropriate [disciplinary] action." The state appraiser maintained that she filed the complaints in her "individual capacity," not on behalf of the Montana DOT. After two and a half years of delays and technical problems with its investigation, and upon the request of the condemnation litigation appraiser, the board dismissed the complaints without prejudice.

The condemnation litigation appraiser filed suit against the state appraiser, alleging libel and slander. In general, a libel claim concerns false written statements while a slander claim is directed at false oral statements; each is a separate form of defamation. Regardless of whether or not the state appraiser was right in her statements about "deficiencies" in the appraiser's work, her successful defense was predictable because her statements to the board were privileged under a Montana law protecting statements made "in any legislative or judicial proceeding or in any other official proceeding authorized by law." This same kind of protection exists, either by statute or common law, in every state and generally serves to immunize persons from liability for statements made in reasonable connection with litigation or a government investigation. Applying Montana's version of the law, the trial court granted summary judgment against the defamation claims and the Montana Supreme Court upheld the judgment. To reach this conclusion, neither court had to assess the veracity of the state appraiser's statements regarding allegedly deficient appraisal work.

Privileges and other protections also apply to appraisal review in other contexts. For example, if an appraiser alleges that a falsely negative review prepared for a lender resulted in the appraiser's loss of work for that lender and the appraiser sues the reviewer, the defamation claim likely will be defended based on what's usually referred to as the "common interest" privilege. While laws vary by state, the common interest privilege as applied to an appraisal review generally protects erroneous statements in a review that are made in good faith to a client or to another person having a legitimate interest in the subject of the appraisal review. However, unlike the immunity described in the Montana case, the common interest privilege usually is "qualified," which means the protection can be lost if the reviewer provided the review or made false statements with malice, which, depending on the case and state, can mean actual ill will and/or disregard for the truth.

I've seen exceptional cases where a review appraiser has lost protection of the common interest privilege, but those instances are rare and involve extreme facts. Such instances include a reviewer creating a negative review to harm a competitor or seeking revenge against an appraiser in cases where there's a personal dispute. For fair-minded review appraisers, however, these problems will not exist. The best way to minimize the risk of a defamation claim is to stick to the assignment and simply review the appraisal. Do not state conclusions about the appraisal under review for which you have not provided analytical or factual support in your report. Limit commentary to legitimate aspects of appraisal review and avoid providing a review or sharing your assessments with anyone other than the client or other person who have a genuine need for the review (and who are authorized by the client).

Communication of Preliminary Assignment Results

(North Carolina Appraisal Board Appraisereport – September 2014)

Appraisers often ask Board staff whether they can transmit all or part of an appraisal report before they have finished the assignment. Some appraisers term these as “draft” reports, while others consider it as simply part of their ongoing scope of work discussion with their client. Usually, these drafts or preliminary reports are not signed or stamped. Some appraisers believe that USPAP, state laws, and Board rules do not apply to such an assignment. In most instances, this is not the case.

State law defines an appraisal as “an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.” An appraisal report is defined as any communication, written or oral, of an appraisal. Once you transmit an analysis, opinion or conclusion of a value to your client, you have transmitted an appraisal report and must comply with Standard 2 of USPAP. It does not matter if the value is considered to be preliminary or final.

Once an appraiser places a value on a piece of identified real estate, it is an appraisal. Some appraisers believe that if they do not sign the transmittal of this value to a client, it is not an appraisal and they cannot be held accountable for it. This is untrue. In fact, USPAP requires that appraisers attach and sign a certification, and Appraisal Board rules require that an appraiser sign an appraisal report, so transmitting an unsigned report or a report without a certification is a violation of USPAP and Board rules.

Some appraisers have asked if they can place a watermark with the word “draft” on each page of the report when sending preliminary assignment results to a client. The Comment to Standards Rule 2-2 states in part that an appraiser may use any other label in addition to, but not in place of, the label for the type of report provided. Using the word “draft” as a watermark is not prohibited by USPAP, state law or Board rules. It does not, however, relieve the appraiser of responsibility for complying with USPAP, state law and Board rules.

If you are transmitting part of your analysis that does not include a value opinion, it is not considered an appraisal report. For example, your client may want to see your property description to make sure it is accurate. Another client may want to see your conclusion as to highest and best use. As long as what you send does not include a value for the property, you do not have to comply with Standard 2.

There is nothing in USPAP, state law, or Board rules that prohibits an appraiser from sending preliminary assignment results to a client. When doing so, however, the report must comply with Standards 1 and 2 of USPAP in all respects. The appraiser must attach a signed certification and must sign the report. Copies of any such information sent to the client must remain in the workfile, even after the final appraisal is sent to the client.