From the Director

The holidays are fast approaching and so is the November 30 renewal deadline for those with licenses expiring on December 31st. Remember, if you don’t have a current license or you do not have errors and omissions insurance by January 1st, you cannot engage in any real estate activity requiring licensure. This holds true for those of you lacking the required continuing education as well. If you renewed your license but failed to complete your continuing education, your license will be placed on inactive status until the education is completed. If you do not know the number of hours you currently have, you can find this information in the ‘Licensee Only’ section on the Commission’s website. Please remember you can renew online. If you are having any problems please give us a call as we would be happy to help.

Lately we have had several licensees that are not reporting to us a change of address/association within 10 days after the removal/move which is prescribed by law (36-21A-52). This is a violation of real estate license laws and rules that the Commission takes serious.

As most of you know, the Real Estate Commission is attached to the Department of Labor and Regulation. Recently, Pam Roberts retired after serving ten+ years as the Department Secretary. Deputy Secretary Marcia Hultman took over as the interim Secretary. The Commission extends a warm farewell and best wishes to Secretary Roberts and a heartfelt welcome to interim Secretary Marcia Hultman. A new secretary will be named soon.

I wish you all a happy holiday season and prosperous new year!

Last Minute Renewal Reminders

With only days remaining before the November 30 deadline, over 1000 licensees have not yet submitted their renewals. In other words, the last minute is here.

As a reminder, the due date is NOT a postmark deadline. The renewals must be received on or before November 30. With the deadline date falling on a Saturday and the SDREC office being closed on Nov. 28 and 29, renewals postmarked on or after Nov. 30 will be returned for the $20 late fee. Individuals renewing by mail do not need to wait until education has been completed to send in the form and fee. If the renewal has not already been mailed, send it TODAY!

Licenses may be renewed online on the SDREC website; however active licensees must have all of their education posted in order to use this system.

One of the most frequently asked questions is, “By what date does the education need to be completed?” There is no exact answer to this question. The education needs to be completed in time for the SDREC office staff to process the renewal and get the new license out to the licensee by January 1. How quickly this can get done depends on how many people are putting off the education into December, which as mentioned earlier, is a sizable percentage of licensees.
Responsible brokers should be aware of the license status of those associated with the firm, especially on January 1. Allowing an unlicensed individual or inactive licensee to conduct real estate business is grounds for disciplinary action. Each year, many licensees are placed on inactive status because they let their E&O insurance lapse. If a licensee is placed on inactive status or fails to renew the license, he/she must immediately transfer all listings and clients to an active licensee and remove all advertisements – this includes websites, signs, social media, etc.

New Licensees

Broker Associate

Boyle, Brooke M – Sioux Falls  
Davis, Shelisa K – Belle Fourche  
Gath, Dalton M – Valley Springs  
Heidebrink, Christine H – Hot Springs  
Jensen, Alex – Sioux Falls  
Lindquist, Ashley E – Sioux Falls  
Milliman, Kat – Madison  
Mouw, Kristy M – Harrisburg  
Rowe, Dylan C – Spearfish  
Smart, Brittany A – Aberdeen

Clark, Dan - Winner  
Donnelly, Troy J – Elk Point  
Green, Joseph D – Sioux Falls  
Jaskulka, Ashton T – Harrisburg  
Krogman, Jill J – Brookings  
Melnyk, Nataliya P – Sioux Falls  
Moe, Scott W – Brandon  
Ploog, Aaron W – Spearfish  
Schultz, Patricia E – Edgemont  
Tschakert, Tanya N – Rapid City

Broker

Altman, Adam H – Aberdeen  
Girotto, Jay R – Kirkland, WA  
Johnson, Roger D – LaCrosse, WI  
Veldhouse, Caleb J - Pierre

Fitzgerald, John H – Saint Onge  
Hoffman, Andrew J – Atkinson, NE  
Schuil, Marc R – Visalia, CA

Salesperson

Friday, Jennifer J – Sioux Falls  
Marlow, Michelle K – Sioux Falls  
Woolston, Amanda J – Spearfish

Jacobson, Daniel – Fort Lauderdale, FL

Residential Rental Agent

Burt, Stephanie M – Brandon  
Woldt, Amber V – Crooks  
Woolston, Amanda J – Spearfish

Marlow, Michelle K – Sioux Falls  
Wolff, Nicole A – Spearfish

Property Manager

Carlson, Adrien “Callie” – Rapid City  
Hodgin, Lloyd D – Aberdeen  
Sand, Misty L – Chandler, AZ

Gilbert, Jon – Ipswich  
Holpp, Frederick A – Rapid City  
Welbig, Dorothy – Sioux Falls

Registered Home Inspector

Abraham, Steven M – Rapid City

Weerheim, Matthew R – Brandon

Timeshare Agent

Alink, Paul K – Hermosa  
Schnabel, Timothy J – Rapid City

Ryan, Michael J – Buffalo

Commission Actions

The following actions by the Commission have become effective since the last report in the newsletter. An Assurance of Voluntary Compliance is a settlement agreement between a licensee and the Real Estate Commission and constitutes neither an admission nor a denial of any violation.

Gary Mueller, Milbank, Broker. Assurance of voluntary compliance. Alleged violation of 36-21A-132(4)(b) for failure to present all written offers to the client in a timely manner. Administrative fine of $500 and completion of the 15-hour Responsible Broker course.
Real Estate Contracts – Do’s, Don’ts and Absolutely Never’s

As part of the audit procedure, the SDREC compliance officers review various listing agreements, buyer agency agreements, purchase agreements, etc. of a brokerage firm. There have been several recent incidents of what can be described, at best, as sloppy paperwork, but also potentially serious liability concerns for the brokerage firm. In particular, are situations whereby licensees are writing “per phone call of the buyer/seller” or allowing people to sign the names of others without verifying that the person has legal authority to do so. Here are a few reminders of what to do, what not to do and what never to do when it comes to contracts and agreements.

Do

…Check the real estate firm’s policy regarding acting as power of attorney for a client. If the brokerage firm’s policy does not address this, discuss the situation with the responsible broker and put a policy in writing. The responsible broker should give serious consideration to the increased legal liability of allowing associates to act as power of attorney in a transaction where the agent is getting a commission. Having a third party serve as power of attorney for the real estate company’s client may reduce risk in the event of a problem with a transaction. It is important to seek legal advice from an attorney to reduce liability when using power of attorney.

…Educate your buyer-client or seller-client on the purchase agreement before it is signed. Communicate with the client that there often are several revisions and/or addendums to the original purchase agreement. Emphasize that with each change, new signatures will be necessary and, although tedious and time-consuming, it is a normal part of the process and will help the transaction to proceed smoothly. If the client is informed early on as to the importance of timely written responses to changes in the contract, it may be easier to run down these signatures. Consider electronic signature software – it may eliminate a lot of the hassle for the agent and the clients.

Don’t

…Neglect to get necessary signatures when there are even minor changes to a contract. Even if it is inconvenient, getting written approval when there is a change or addendum to the contract protects everyone – the client/customer, the agent, and the brokerage firm. The deal is only as good as what was last agreed to by all parties in writing.

…Expect that writing “per phone call” from the buyer/seller on a contract, addendum, etc. will be legally binding in the event a transaction is disputed. Until actual signatures are acquired, “per phone call” means little because there is nothing proving that the client actually gave consent.

Absolutely Never…

… Sign the name of a client without written power of attorney. Even if a client verbally authorizes it, it is NOT okay! Doing so can jeopardize your license, put you at risk of being sued and may result in the matter being referred to law enforcement. It is unethical and illegal.

…allow clients to sign for other people. For example, if the contract needs the signatures of both husband and wife, don’t allow one to sign the other’s name unless there is power of attorney to do so and the client can provide written proof of such authority.

The SDREC cannot determine whether a contract or written agreement is valid or enforceable. Licensees and/or consumers will need to seek legal advice from an attorney to best determine how to proceed in the event of a dispute.
Appraiser Update

New Licensees – September/October 2013

William D. Gion, State-Certified General – Regent, ND
David P. Bloxham, State-Certified Residential – Omaha, NE
Robert L. Moorman, State-Certified General – Houston, TX
Tim J. Janssen, State-Certified General – Newton, IA
Brian T. Nelson, State-Registered – Sioux Falls, SD
Joel L. Tucker, State-Registered – Sioux Falls, SD
Brandon D. Kirk, State-Registered – Marshall, MN
Corey J. Kost, State-Certified General – Bismarck, ND
F. Nick Boutrous, State-Certified General – Bismarck, ND
Curtis Brooks, State-Registered – Yankton, SD
Erick L. Enloe, State-Certified General – Chicago, IL
Scott C. Siemens, State-Certified General – West Des Moines, IA

Upgrades Issued September/October 2013

Gregg Neu, State-Certified General
Dennis Stebner, State-Licensed

Review of Cases – January 1 - November 12, 2013

For the period January 1, 2013 through August 19, 2013, the Department has initiated ten complaint investigations and three upgrade reviews.

Complaints – Five closed and five pending.
Upgrades – Three cases pending.

Six Ways to Stay Out of Trouble
By Larry Disney

My first commandment for appraisers is: Know the truth and let the truth set you free. In this context, it means that you are in control of both the appraisal development and reporting. Therefore, let no person coerce, threaten or influence your objectivity, impartiality, or independence.

After that, and based on my 10 years’ experience as Executive Director of the Kentucky Real Estate Appraisers Board, I have seen that the most common appraisal mistakes occur because of a failure to report credible assignment results. Here are six common appraisal mistakes and ways to avoid them. Value opinions may differ but the question is always: Is the report credible and defendable, no matter the value?

Mistake 1 – Failure on the part of the appraiser to recognize that he or she is a professional; therefore, having sole responsibility for knowing and understanding the requirements for developing and reporting a credible opinion of value. This means developing a credible and accurate Scope of Work, including knowing how long a report will take to complete competently and what fee is required to take the proper time to do the job right.
Mistake 2 – *Failure to perform assignments ethically and competently.* Being ethical and competent requires two different but necessary skill sets. An ethics violation is intentional. A violation of competency is usually not understanding or not knowing. Negligence and gross negligence typically happen due to a failure to thoroughly review the work. Review your work completely. Avoid boilerplate. That’s how mistakes happen.

Mistake 3 – *Failure to complete meaningful education that will enhance knowledge and understanding of the appraisal process.* The best method for ensuring professional success is to continually diversify your practice. The best way to do this is to broaden your experience by learning and growing on a continuing basis. This opens new doors of opportunity which allows more opportunity to pick and choose assignments. Choice is good. Try to set aside time each month for professional development that exceeds your mandated continuing education hours. This includes gaining insights into professional appraisal practices as well as business strategies and the latest technology issues.

Mistake 4 – *Failure to associate with peers on a regular basis.* Too many appraisers fail to grow and develop because they work in isolation. Consider affiliating with a professional organization. Attend meetings of the appraiser regulatory agency in your state. Sign up to receive information from the Appraisal Foundation – these folks control your profession. Remain up-to-date on the work of the Appraisal Standards Board, Appraiser Qualifications Board and the new Appraisal Practices Board. Make comments on proposed changes to the Uniform Standards of Professional Practice when that is permitted. Comments are read and considered. Visit the Appraisal Subcommittee website regularly to review the latest information (ASC.gov).

Mistake 5 – *Failure to identify an appropriate scope of work for each appraisal assignment.* How do you combat this? Identify relevant characteristics; identify extraordinary assumptions and hypothetical conditions; disclose research and analyses performed and not performed; disclose significant real property appraisal assistance.

Another problem is failure to include a signed certification that includes the required information. Here are several examples of verbiage that can keep you out of trouble: *I have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.*

Another is: *I have (or have not) made a personal inspection of the property that is the subject of this report.* (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

And another is: *No one provided significant real property appraisal assistance to the person signing this certification.* (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.) Assistance must be noted in the certification by name, and include a list within the body of the report of each step completed, if the person does not sign the report.

Mistake 6 – *Failure to identify and understand applicable client conditions for each assignment.* This problem is solved by knowing, understanding and following the various professional guidelines, such as: The Interagency Appraisal and Evaluation Guidelines; Fannie Mae Selling Guidelines and FHA Requirements. And in allocating value contributions: Real Property STD 1 & 2, Personal Property (FF&E) STD 7 & 8 and Business STD 9 & 10.

About the Author

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2014-15 USPAP Q&A
Issue Date: October 9, 2013

Note: This is a special edition of USPAP Q&A intended to address some questions associated with the 2014-15 edition of USPAP, which is effective January 1, 2014 through December 31, 2015. The following Q&A apply to the 2014-15 edition of USPAP only. They do not apply to the 2012-13 edition.

The responses to the following questions may be found at The Appraisal Foundation website (www.appraisalfoundation.org).

1. What will be changing in the 2014-15 edition of USPAP?

2. Effective January 1, 2014, what are the changes to reporting standards for real property and for personal property appraisal assignments?

3. What are the requirements for each report format under STANDARD 2 and STANDARD 8?

4. When is it appropriate to use the Appraisal Report option?

5. When is it appropriate to use the Restricted Appraisal Report reporting option in an appraisal assignment?

6. Does the decision to use an Appraisal Report, a Restricted Appraisal Report, or an oral appraisal report impact the scope of work for an assignment?

7. Several of the required items for an Appraisal Report and a Restricted Appraisal Report differ by the use of the terms “summarize” versus “state.” What is the difference?

8. What are the workfile requirements for an assignment with a Restricted Appraisal Report? Is there any additional information required to be in the workfile when comparing an assignment with an Appraisal Report to an assignment with a Restricted Appraisal Report?

9. If a Restricted Appraisal Report includes the rationale for how the appraiser arrived at the opinions and conclusions may the appraiser exclude the required warning?

10. A client asked me to communicate an appraisal using a particular form that is prominently labeled “Summary Appraisal Report.” Is it acceptable to communicate an appraisal using this report label since a Summary Appraisal Report is no longer referenced in the 2014-15 edition of USPAP?

11. A Restricted Appraisal Report must include the following statement “that the rationale for how the appraiser arrived at the opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser’s workfile.” Standard Rules 2-1, 8-1 and 10-1 state “Each written or oral … appraisal report must: (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly.” Is this an inconsistency?

The SD Real Estate Commission and the SD Appraiser Certification Offices will be closed on the following:
November 28 & 29 – Thanksgiving
December 24 & 25 – Christmas
January 1 – New Year
Happy Holidays!